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NAVAL POSTGRADUATE SCHOOL

MONTEREY, CALIFORNIA

THESIS

**CONGRESSIONAL OVERSIGHT OF HOMELAND
SECURITY: HELP OR HINDERANCE?**

by

Tapan Sen

December 2012

Thesis Advisor:
Second Reader:

Erik J. Dahl
Carolyn C. Halladay

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**CONGRESSIONAL OVERSIGHT OF HOMELAND SECURITY: HELP OR
HINDERANCE?**

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Submitted in partial fulfillment of the
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**MASTER OF ARTS IN NATIONAL SECURITY AFFAIRS
(HOMELAND SECURITY)**

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ABSTRACT

Congressional oversight of homeland security constantly receives harsh criticism from scholars and the media for being disjointed and overbearing. Critics often cite the numerous committees and members of Congress that have jurisdiction over the Department of Homeland Security. They allege that this disparate oversight leads to conflicting direction, inefficiency, and wasted resources. While there is room for improvement, congressional oversight is not as fragmented and ineffective as critics make it appear. This thesis conducts a historical case study analysis to demonstrate that congressional oversight of homeland security is rigorous, systematic, and effective. Congressional oversight of intelligence is presented as an example for failure, followed by defense oversight, which is presented as an example for success. Careful evaluation shows that homeland security oversight more closely resembles the path of defense oversight. This research suggests that the aggressive, and at times even overbearing, oversight of homeland security policy leads to better results than weak and timid oversight.

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TABLE OF CONTENTS

I.	INTRODUCTION.....	1
A.	MAJOR RESEARCH QUESTION.....	1
B.	IMPORTANCE.....	2
C.	METHODS AND SOURCES.....	5
II.	THE CREATION AND EVOLUTION OF DHS.....	9
A.	THE REORGANIZATION OF DHS.....	13
B.	CONGRESSIONAL OVERSIGHT IN THEORY AND PRACTICE.....	16
C.	CONGRESSIONAL OVERSIGHT OF DHS	19
D.	COMMON CRITIQUES OF CONGRESSIONAL OVERSIGHT OF HOMELAND SECURITY	23
E.	CONCLUSION	25
III.	CONGRESSIONAL OVERSIGHT OF INTELLIGENCE.....	27
A.	BEFORE THE INTELLIGENCE COMMITTEES: 1947–1976	28
B.	THROUGH THE END OF THE COLD WAR: 1976–1991	34
C.	PRESENT ISSUES: 1991–2012	38
D.	CONCLUSION	41
IV.	CONGRESSIONAL OVERSIGHT OF DEFENSE	43
A.	NATIONAL SECURITY ACT OF 1947–VIETNAM WAR: STRENGTHENING THE POWER OF THE PURSE	43
B.	VIETNAM WAR-GOLDWATER-NICHOLS: STRENGTHENING THE OVERSIGHT OF OPERATIONS.....	48
C.	GOLDWATER-NICHOLS-PRESENT: MAINTAINING RIGOROUS OVERSIGHT	49
D.	CONCLUSION	53
V.	FINAL COMPARISONS AND CONCLUSION	55
A.	SYSTEMATIC VERSUS REACTIONARY OVERSIGHT.....	56
B.	THE IMPORTANCE OF BUDGETARY AUTHORITY.....	59
C.	ADDRESSING THE COMMON CRITIQUES.....	62
D.	FINAL CONCLUSION.....	63
	LIST OF REFERENCES.....	65
	INITIAL DISTRIBUTION LIST	75

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LIST OF FIGURES

Figure 1.	Department of Homeland Security Prior to 2SR	14
Figure 2.	Department of Homeland Security: Current Structure	15

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LIST OF TABLES

Table 1.	Agency-Type of Oversight-Results	7
Table 2.	Agencies Transferred to DHS	12
Table 3.	Illustration of Overlapping Jurisdictions	21

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LIST OF ACRONYMS AND ABBREVIATIONS

2SR	Second Stage Review
BW	Biological Warfare
CBP	Customs and Border Patrol
CBRN	Chemical, Biological, Radiological and Nuclear
CIA	Central Intelligence Agency
CIG	Central Intelligence Group
DCI	Director of Central Intelligence
DHS	Department of Homeland Security
DNI	Director of National Intelligence
DoD	Department of Defense
FBI	Federal Bureau of Investigation
FEMA	Federal Emergency Management Agency
FLETC	Federal Law Enforcement Training Center
FY	Fiscal Year
GAO	Government Accountability Office
GSA	General Services Administration
HAC	House Appropriations Committee
HASC	House Armed Services Committee
HHS	Health and Human Services
HPSCI	House Permanent Select Committee on Intelligence
HSPD	Homeland Security Presidential Directive
ICE	Immigrations and Customs Enforcement
IG	Inspectors General
INS	Immigration and Naturalization Service
JCS	Joint Chiefs of Staff
NHSA	National Homeland Security Agency
NIPP	National Infrastructure Protection Plan
NPPD	National Programs and Protection Directorate
NSC	National Security Council
NDPO	National Domestic Preparedness Office
NIPC	National Infrastructure Preparedness Office
OHS	Office of Homeland Security

SAC	Senate Appropriations Committee
SAP	Special Access Program
SASC	Senate Armed Services Committee
SSA	Sector-Specific Agency
SSCI	Senate Select Committee on Intelligence
TSA	Transportation Security Administration
U.S.	United States
U.S.-CERT	United States Computer Emergency Readiness Team
USCG	United States Coast Guard

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I. INTRODUCTION

There are hundreds of different ways that terrorist groups can attack the United States. In addition to such “traditional” methods as bombings and airplane hijackings, terrorists can attack the food supply or water supply; they could release infectious diseases; or they might attempt financial attacks and cyber-attacks. All these scenarios fall into the realm of homeland security. At the same time, preventing and responding to natural disasters like Hurricane Katrina and man-made disasters like the Deepwater Horizon oil spill also fall under the umbrella of homeland security. Clearly, the Department of Homeland Security (DHS) has an extremely broad mission. Therefore, it follows that congressional committees ranging from the House Homeland Security Committee to the Senate Committee on Agriculture, Nutrition, and Forestry should all have some level of DHS oversight. Does the current congressional oversight structure of the Department of Homeland Security enhance the national security of the United States?

A. MAJOR RESEARCH QUESTION

The formation of DHS was unique in that it was predominantly composed of 22 pre-existing federal agencies with more than 180,000 employees.¹ Each of these agencies had a previously established congressional oversight structure. Following its creation, DHS essentially absorbed these previous oversight structures. For this reason, the majority of scholarly journal articles and media reports deem congressional oversight of homeland security dysfunctional. They often cite that no fewer than 88 committees and subcommittees in the House of Representatives and Senate claim jurisdiction over DHS.² Additionally, they refer to the staggering number of congressional briefings, reports and questions for the record to which DHS responds to each year and the strain these requests place on department personnel. Critics assert that Congress’ disparate oversight leads to conflicting direction and prevents DHS from accomplishing its mission.

¹ Booz Allen Hamilton and Partnership for Public Service, *Securing the Future: Management Lessons of 9/11* (Washington, DC: Partnership for Public Service, 2011), 4.

² *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States* (Washington, DC: U.S. Government Printing Office, 2004), 421.

In addition to the primary question this thesis considers, if homeland security oversight is so dysfunctional why has Congress not sought change? Partisan polarization and “turf battles” are the typical reasons proposed by critics. These explanations imply that senators and representatives are unable to put national security considerations past their personal quests for power and selfish desires. In contrast, this thesis argues that Congress’ decentralized oversight structure is appropriate and effective. Beyond limited cases of parochialism, senators and representatives are conducting robust and systematic oversight of homeland security. Congress is making appropriate changes to its homeland security oversight structure as it gains experience.

B. IMPORTANCE

The 2004 *National Commission on Terrorist Attacks Upon the United States Report*, more popularly known as the *9/11 Commission Report*, is a glimpse into the inadequacies in government and intelligence that failed to stop the tragedies of September 11, 2001. The report not only methodically recounted the events that led up to 9/11, but it also included multiple recommendations for how the United States can prevent similar tragedies in the future. The president and Congress have implemented many of these recommendations already. Most importantly, the 110th Congress put into action many of the commission’s recommendations with the enactment of Public Law 110–53, better known as the Implementing Recommendations of the 9/11 Commission Act of 2007.³ The act covers a wide array of homeland security issues ranging from congressional oversight of intelligence to protection of civil liberties.⁴

Congress has not, however, fully implemented at least one point from the 9/11 Commission:

Recommendation: Congress should create a single, principal point of oversight and review for homeland security. Congressional leaders are best able to judge what committee should have jurisdiction over this department and its duties. But we believe Congress does have the

³ *Implementing Recommendations of the 9/11 Commission Act of 2007*, Pub. L. No. 110–53, 110th Cong., 1st. Sess. (August 3, 2007), accessed May 20, 2012, <http://intelligence.senate.gov/laws/pl11053.pdf>.

⁴ *Implementing Recommendations of the 9/11 Commission Act of 2007*.

obligation to choose one in the House and one in the Senate, and that this committee should be a permanent standing committee with a non-partisan staff.⁵

The House of Representatives has established a permanent standing Homeland Security Committee, although it is hardly the “principal point of oversight.” Additionally, the Senate has transformed the previous Governmental Affairs Committee into the Homeland Security and Governmental Affairs Committee.⁶ However, this committee also does not serve as a “single, principal point of oversight.” At the time of the *9/11 Commission Report*, approximately 88 committees and subcommittees held jurisdiction over DHS.⁷ According to more recent estimates approximately 108 committees and subcommittees, 412 members of the House, and all 100 senators retain some oversight responsibility over the Department of Homeland Security.⁸ While the *9/11 Commission Report* has served as a guide for reforming many other aspects of homeland security, and several of its recommendations have been implemented, this particular measure remains curiously untouched. Arguably, the oversight point is key, if not *the* key measure; the *9/11 Commission Report* admonishes “Of all our recommendations, strengthening congressional oversight may be among the most difficult and important...So long as oversight is governed by current rules and resolutions, we believe the American people will not get the security they want and need.”⁹

Without question, DHS leadership finds the current congressional oversight structure burdensome and distracting.¹⁰ Between 2004 and 2007 DHS participated in

⁵ *The 9/11 Commission Report*, 421.

⁶ Center for Strategic and International Studies, “Untangling the Web: Congressional Oversight and the Department of Homeland Security,” December 10, 2004, 3.; United States Senate, accessed May 20, 2012, http://www.senate.gov/pagelayout/reference/e_one_section_no_teasers/org_chart.htm.

⁷ *The 9/11 Commission Report*, 421.

⁸ “Untangling the Web: Congressional Oversight and the Department of Homeland Security,” 2.; Sarah Laskow, “Is Congress Failing on Homeland Security Oversight,” iWatch News from The Center for Public Integrity, updated May 17, 2011, <http://www.iwatchnews.org/2009/07/16/2822/congress-failing-homeland-securityoversight>.

⁹ *The 9/11 Commission Report*, 419.

¹⁰ Secretary Michael Chertoff to Representative Peter King, September 4, 2007, Office of the Secretary of the Department of Homeland Security, accessed May 20, 2012, 2, <http://www.hsdl.org/?view&did=683475>.

696 congressional hearings and provided 7,864 briefings to Congress.¹¹ Former DHS Secretary Michael Chertoff wrote in a letter to House Homeland Security Committee Chairman, Peter King, “I ... strongly concur with your conclusion that oversight activity by some 86 committees and subcommittees of Congress creates a uniquely difficult and unnecessary burden for DHS.”¹²

This thesis argues that as cumbersome as the current oversight structure may seem, it is not detrimental to the national security of the United States. The number of terrorist attacks per year has dropped by more than 60 percent in the decade following 9/11.¹³ Therefore, Congress is certainly not impeding counterterrorism efforts, and is arguably even aiding DHS through their robust oversight. Additionally, homeland security is the responsibility of various federal agencies, states, localities and tribal authorities, which makes it a widespread issue requiring oversight from a variety of congressional committees. A review of testimony and hearings indicates that no one agency within DHS is servicing a disproportionate number of requests from Congress.¹⁴ Final coordination may very well go through headquarters DHS, but the written reports and testifying officials come from many different agencies. Furthermore, the effectiveness of congressional oversight is not meant to be measured by expediency or ease of coordination.¹⁵ Oversight is meant to ensure that taxpayers’ dollars are used properly, executive privileges are not abused, and the homeland is secure.¹⁶ This thesis does not assert that congressional oversight of homeland security is without flaws. There are certainly ways to streamline the oversight of homeland security, but it should not be done at the expense of effectiveness.

¹¹ Secretary Michael Chertoff to Representative Peter King, September 4, 2007, 1.

¹² Secretary Michael Chertoff to Representative Peter King, September 4, 2007, 1.

¹³ Erin Miller and Kathleen Smarick, “Background Report: 9/11, Ten Years Later,” *The National Consortium for the Study of Terrorism and Responses to Terrorism*, http://www.start.umd.edu/start/announcements/BackgroundReport_10YearsSince9_11.pdf.

¹⁴ Hearings located at <http://www.dhs.gov/xabout/112-congress.shtm>.

¹⁵ Loch K. Johnson, “Congress and Intelligence,” in *Congress and the Politics of National Security*, edited by David P. Auerswald and Colton C. Campbell (Cambridge: Cambridge University Press, 2012), 122.

¹⁶ Johnson, “Congress and Intelligence,” 122.

C. METHODS AND SOURCES

This thesis uses a comparative analysis in examining whether or not the current congressional oversight structure enhances homeland security. Congressional oversight of DHS is judged against oversight of two other critical national security organizations: the Department of Defense (DoD) and the Central Intelligence Agency (CIA). Each of these three federal organizations was created after a defining event in United States history. The National Security Act of 1947 created both the DoD and the CIA as a response to the Japanese attack on Pearl Harbor, which was perceived as a failure of U.S. intelligence and an indictment of a fractured military structure. In 2001, President George W. Bush proposed the creation of the Department of Homeland Security in the wake of the 9/11 tragedy, again in response to the perception of shortcomings within and among the agencies that should have kept the nation safe. All three organizations received wide-ranging congressional oversight responses.

This study argues that congressional oversight of the Department of Defense is a model for success. Upon creation of the DoD, Congress already had an oversight structure in place. One year before National Security Act of 1947 the Legislative Reorganization Act of 1946 created the current House and Senate Armed Services (HASC/SASC) Committees.¹⁷ Additionally, Congress has displayed a history of rigorous systematic oversight of DoD. In their 1984 seminal work “Congressional Oversight Overlooked: Police Patrols vs. Fire Alarms” Matthew D. McCubbins and Thomas Schwartz classified oversight methods into two general categories. The first, “police patrol,” refers to oversight conducted on a routine basis, whereas the second, “fire alarm,” is a more reactive method of oversight.¹⁸ The literature review in Chapter II contains a full examination of McCubbins and Schwartz’s article. Congress has a history of favoring police patrol oversight over DoD keeping the department free from major

¹⁷ *Legislative Reorganization Act of 1946*, Pub. L. No. 29–401, 79th Cong., 2nd Sess. (August 2, 1946).

¹⁸ Mathew D. McCubbins and Thomas Schwartz, “Congressional Oversight Overlooked: Police Patrols and Fire Alarms,” *American Journal of Political Science* 28, no. 1 (1984): 166.

scandals or failures for its 65-year history. Although there have been instances where fire alarm oversight was necessary, Congress has not relied on it as a primary method of oversight.

In contrast, congressional oversight of the CIA is seen in this thesis as an example of failure. Congress has shown a preference for the fire-alarm method of oversight for reviewing intelligence. Separate committees for intelligence oversight did not even exist until almost 30 years after the creation of the CIA. Only after the Church and Pike Committees of the mid-1970s uncovered serious executive branch abuses of power and disregard for constitutional principles did Congress create the intelligence committees. Unfortunately, what seemed like drastic reform had very little impact on curbing executive branch abuses. Congress had long ago surrendered many of its typical systematic oversight tools in the name of secrecy and then failed to reclaim them after the Church and Pike Committees released their findings. The Iran-Contra scandal occurred less than ten years later. Furthermore, the intelligence community's slow adaptation to the post-Cold War world is often cited as a critical shortcoming leading to the 9/11 tragedy.¹⁹ Once again systematic and rigorous congressional oversight could have helped to expedite the intelligence community's transition. All of these events serve as strong arguments against the fire-alarm method of oversight. To reduce the scope of the comparative analysis, this thesis only examined pre-9/11 oversight of the CIA. The Intelligence Reform and Terrorism Prevention Act of 2004, passed in an effort to follow the *9/11 Commission Report's* recommendations, significantly changed the organization of the intelligence community.²⁰ Most notably the act consolidated the national intelligence community under a single Director of National Intelligence (DNI).²¹

Although the new structure is not evaluated in the comparative analysis, this thesis briefly comments on whether the post-9/11 structure has improved congressional oversight of intelligence. Additionally, a pre-9/11 analysis still allows for 54 years of

¹⁹ Prevalent theme throughout *9/11 Commission Report*, particularly Chapter 13.

²⁰ *Intelligence and Reform Act of 2004*, Pub. L. No. 108-458, 108th Cong., 2nd Sess. (December 17, 2004), accessed 1 June 2012, <http://www.govtrack.us/congress/bills/108/s2845/text>.

²¹ *Intelligence and Reform Act of 2004*, Title I, Subtitle A, Sec 102.

intelligence oversight data to draw from and compare to the 10-year life of the Department of Homeland Security. Finally, the term “intelligence oversight” will be used interchangeably with oversight of the CIA.

Congress has predominantly used the police patrol method of oversight with regard to the Department of Homeland Security. The number of briefings, testimonies, and reports that Congress requests from DHS is evidence of systematic and rigorous oversight. Additionally, a wide array of representatives and senators take an active role in oversight of homeland security. Regardless of their motivations, members of Congress are engaged in monitoring DHS and DoD but remain unassertive in intelligence oversight. Therefore, the comparative analysis reveals that DHS oversight is more closely aligned with DoD oversight and is subsequently poised for success. The defining events, types of oversight, and levels of success are summarized in Table 1.

Agency	Defining Event(s)	Action/ Result	Predominant Oversight Method	Results
DoD	World War II – Pearl Harbor	DoD created	Police Patrol	Strong Oversight W/Minimal Executive Branch Abuse
CIA	World War II – Pearl Harbor	CIA created	Fire-Alarm	Weak Oversight/ Significant Executive Branch Abuse
DHS	9/11	DHS created	Police Patrol	Strong Oversight

Table 1. Agency-Type of Oversight-Results

The results of the comparative analysis challenge the common complaints about the current congressional oversight of DHS. The analysis demonstrates that diverse oversight is necessary and that the briefings, testimonies, and reports are not to be viewed as a nuisance; they are simply Congress doing its job. Given the breadth of homeland security, a single point of oversight is impossible and undesirable.

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II. THE CREATION AND EVOLUTION OF DHS

Expert panels recommended the idea of a DHS-like organization to Congress and the president several months before the September 11, 2001, attacks. The Gilmore Commission and the Hart Rudman Commission both concluded that the United States needed to consolidate national homeland security efforts.²² The Gilmore Commission, formally known as the Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction (WMD), was chaired by former Virginia Governor James Gilmore.²³ The commission released its first annual report in 1999, and as the name implies, focused primarily on the government's preparedness to "deter, detect, interdict, prevent, or respond to" WMD terrorist attacks.²⁴ Although the panel did not explicitly recommend a single national security agency it did note the disparate nature of federal detection and response capabilities.²⁵ Additionally, it highlighted the fact that no one was "in charge" in the event a terrorist attack occurs.²⁶ Despite these observations very little was done to consolidate national security efforts.

Subsequently, the Department of Defense chartered the Hart Rudman Commission, or The United States Commission on National Security/21st Century, to "conduct a comprehensive review of the early 21st Century global security environment."²⁷ This study, which took a broader view than the Gilmore Commission, was also directed to develop a plan to combat the emerging security environment. The

²² Advisory Panel to Assess Response Capabilities for Terrorism Involving Weapons of Mass Destruction, *I. Assessing the Threat* (Washington, DC: U.S. GPO 1999); The United States Commission on National Security/21st Century, *Roadmap for National Security: Imperative for Change* (Washington, DC: U.S. GPO 2001).

²³ Advisory Panel to Assess Response Capabilities for Terrorism Involving Weapons of Mass Destruction, *I. Assessing the Threat*, B-2.

²⁴ Advisory Panel to Assess Response Capabilities for Terrorism Involving Weapons of Mass Destruction, *I. Assessing the Threat*, 39.

²⁵ Advisory Panel to Assess Response Capabilities for Terrorism Involving Weapons of Mass Destruction, *I. Assessing the Threat*, Common theme throughout much of the report.

²⁶ Advisory Panel to Assess Response Capabilities for Terrorism Involving Weapons of Mass Destruction, *I. Assessing the Threat*, 61.

²⁷ The United States Commission on National Security/21st Century, *Roadmap for National Security: Imperative for Change*, 130.

commission released its report to Congress and the president on February 15, 2001, and prophetically stated that, “[a] direct attack against American citizens *on American soil* is likely over the next quarter century.”²⁸ The members of the commission made the following recommendation:

We therefore recommend the creation of an independent National Homeland Security Agency (NHSA) with responsibility for planning, coordinating, and integrating various U.S. government activities involved in homeland security. NHSA would be built upon the Federal Emergency Management Agency, with the three organizations currently on the front line of border security—the Coast Guard, the Customs Service, and the Border Patrol—transferred to it. NHSA would not only protect American lives, but also assume responsibility for overseeing the protection of the nation’s critical infrastructure, including information technology.²⁹ (emphasis in original text)

Once again, these recommendations were not implemented by Congress or the White House until well after the 9/11 tragedy.

On October 8, 2001, President George W. Bush issued Executive Order 13228 establishing DHS’s predecessor, the Office of Homeland Security (OHS), and naming Pennsylvania Governor Tom Ridge as director.³⁰ As the Director of the “Office” of Homeland Security, Ridge had few resources, and little staff, funds, or authority to coordinate homeland security efforts across the country at the federal, state, and local levels.³¹ Additionally, with the organization’s status as an “Office” rather than a

²⁸ The United States Commission on National Security/21st Century, *Roadmap for National Security: Imperative for Change*, viii.

²⁹ The United States Commission on National Security/21st Century, *Roadmap for National Security: Imperative for Change*, viii.

³⁰ Creation of the Department of Homeland Security, U.S. Department of Homeland Security, accessed September 24, 2012, <http://www.dhs.gov/creation-department-homeland-security>; Richard S. Conley, “The Department of Homeland Security and the Dual Politics of Reorganization: Presidential Preemption, Agency Restructuring, and Congressional Challenges” (Paper prepared for the conference “The Presidency, Congress, and the War on Terrorism: Scholarly Perspectives,” Department of Political Science, University of Florida), 2, <http://www.clas.ufl.edu/users/rconley/conferencepapers/Conley.PDF>; Jane Bullock et. al., *Introduction to Homeland Security: Principles of All-Hazards Response*, 3rd ed. (Boston: Butterworth-Heinman, 2009), 36.

³¹ Tom Ridge with Larry Bloom, *The Test of Our Times* (New York: Thomas Dunne/St. Martin’s, 2009), 44–46 and 87.

“Department,” Congress had no control of the process.³² This situation led to an almost immediate call from the legislative branch to establish a cabinet level department.³³ Initially President Bush opposed creating a Department of Homeland Security. Within a few months, however, he changed his mind and in June 2002 submitted to Congress the White House’s own proposal for DHS.³⁴ The proposal incorporated many of the recommendations from the Hart Rudman and Gilmore Commissions. On June 24, 2002, Representative Richard K. Armey introduced legislation in the House to establish the department, and the Senate introduced a parallel bill shortly afterwards.³⁵ The bills passed through the House and Senate with votes of 295–132 and 90–9.³⁶ President Bush signed Public Law 107–296 on November 25, 2002, to officially establish the Department of Homeland Security.³⁷

DHS officially began operations on March 1, 2003, and marked the largest change in federal government structure since the National Security Act of 1947.³⁸ Tom Ridge remained in charge of the organization and became the department’s first secretary. Although DHS was built from twenty two pre-existing agencies, not all organizations were transferred as intact entities. The United States Coast Guard (USCG), Transportation Security Administration (TSA), and the Secret Service were transferred in one piece. Many border security functions, however, were not transferred intact. The functions of the previous U.S. Customs Service and Immigration and Naturalization Service are now spread across three DHS agencies: Customs and Border Protection

³² Conley, “The Department of Homeland Security and the Dual Politics of Reorganization: Presidential Preemption, Agency Restructuring, and Congressional Challenges,” 2.

³³ Conley, “The Department of Homeland Security and the Dual Politics of Reorganization: Presidential Preemption, Agency Restructuring, and Congressional Challenges,” 2.

³⁴ Conley, “The Department of Homeland Security and the Dual Politics of Reorganization: Presidential Preemption, Agency Restructuring, and Congressional Challenges,” 2; President George W. Bush, The Department of Homeland Security, June 2002, accessed May 20, 2012, 4, <http://www.dhs.gov/xlibrary/assets/book.pdf>.

³⁵ Bullock, *Introduction to Homeland Security*, 53.

³⁶ Conley, “The Department of Homeland Security and the Dual Politics of Reorganization: Presidential Preemption, Agency Restructuring, and Congressional Challenges,” 3 and 6.

³⁷ *Homeland Security Act of 2002*, Pub. L. No. 107–296, 107th Cong., 2nd Sess. (November 25th, 2002), accessed June 1, 2012, <http://www.govtrack.us/congress/bills/107/hr5005/text>.

³⁸ Creation of the Department of Homeland Security, <http://www.dhs.gov/creation-department-homeland-security>.

(CBP), Immigration and Customs Enforcement (ICE), and U.S. Citizenship and Immigration Services (USCIS).³⁹ Finally, some smaller functions of other executive departments were absorbed by DHS. For details see Table 2.

	Original Agency	Original Dept.	Current Agency in DHS
1	The U.S. Customs Service	Treasury	Split among CBP and ICE
2	INS	Justice	Split among CBP, ICE, and USCIS
3	The Federal Protective Service	GSA	ICE (until 2009, moved to NPPD)
4	TSA	Transportation	Stand alone
5	FLETC	Treasury	Stand alone
6	Animal and Plant Health Inspection Service	Agriculture (partial)	CBP (agricultural and imports and entry inspections)
7	Office for Domestic Preparedness	Justice	FEMA
8	FEMA	Independent	Stand alone
9	Strategic National Stockpile and the National Disaster Medical System	HHS	Returned to HHS in July 2004
10	Nuclear Incident Response Team	Energy	FEMA
11	Domestic Emergency Support Teams	Justice	FEMA
12	NDPO	Justice – FBI	FEMA
13	CBRN Countermeasures Programs	Energy	Science and Technology Directorate
14	Environmental Measurements Laboratory	Energy	Science and Technology Directorate
15	National BW Defense Analysis Center	Defense	Science and Technology Directorate
16	Plum Island Animal Disease Center	Agriculture	Science and Technology Directorate
17	Federal Computer Incident Response	GSA	U.S.-CERT, in NPPD
18	National Communications System	Defense	NPPD
19	NIPC	Justice - FBI	Dispersed throughout DHS
20	Energy Security and Assurance Program	Energy	Office of Infrastructure Protection
21	U.S. Coast Guard	Transportation	Stand alone
22	U.S. Secret Service	Treasury	Stand alone

Table 2. Agencies Transferred to DHS⁴⁰

³⁹ Who Became Part of the Department, U.S. Department of Homeland Security, accessed September 24th, 2012. http://ipv6.dhs.gov/xabout/history/editorial_0133.shtm.

⁴⁰ Table 2 created by author using information obtained from the following sources: Who Became Part of the Department, U.S. Department of Homeland Security, accessed September 24th, 2012, http://ipv6.dhs.gov/xabout/history/editorial_0133.shtm; LCDR D.C. Baldinelli, “The U.S. Coast Guard’s Assignment to the Department of Homeland Security: Entering Uncharted Waters or Just a Course Correction?” United States Coast Guard, December 9, 2002, http://www.uscg.mil/history/articles/Homeland_Security_Baldinelli.asp; Secret Service History, United States Secret Service, accessed September 24, 2012 <http://www.secretservice.gov/history.shtml>; U.S. Library of Congress, Congressional Research Service, *The Federal Protective Service and Contract Security Guards: A Statutory History and Current Status*, by Shawn Reese, CRS Report RS22706 (Washington, DC: Office of Congressional Information and Publishing, August 20, 2009), 1; U.S. Library of Congress, Congressional Research Service, *Federal Emergency Management Policy Changes After Hurricane Katrina: A Summary of Statutory Provisions*, by Keith Bea, CRS Report RL33729 (Washington, DC: Office of Congressional Information and Publishing, March 6, 2007), 3–6.

A. THE REORGANIZATION OF DHS

On February 15, 2005, Michael Chertoff relieved Tom Ridge as the Secretary of Homeland Security.⁴¹ Soon thereafter, he started a Second Stage Review (2SR) that was a “systematic evaluation of the Department’s operations, policies and structures.”⁴² Secretary Chertoff released the results of 2SR on July 13, 2005, and summarized them in a “six-point agenda.”⁴³

1. Increase overall preparedness, particularly for catastrophic events.
2. Create better transportation security systems to move people and cargo more securely and efficiently.
3. Strengthen border security and interior enforcement and reform immigration processes.
4. Enhance information sharing with our partners.
5. Improve DHS financial management, human resource development, procurement and information technology.
6. Realign the DHS organization to maximize mission performance.⁴⁴

To achieve these goals Secretary Chertoff implemented several internal reorganization measures. Notable additions to DHS were a Directorate of Policy, Office of Intelligence and Analysis, a Director of Operations Coordination, and a Directorate for Preparedness.⁴⁵ FEMA became a direct reporting unit to the Secretary and the Federal Air Marshal Service was moved from ICE to TSA.⁴⁶ Secretary Chertoff also eliminated the Border and Transportation Security Directorate and made CBP and ICE direct reporting elements.⁴⁷ In his proposed plan, the Director of Operations Coordination would assist the Secretary in managing all the different operational elements.⁴⁸ The 2SR plan intended

⁴¹ Former Secretaries of Homeland Security, U.S. Department of Homeland Security, accessed September 25, 2012, http://ipv6.dhs.gov/xabout/history/editorial_0585.shtm.

⁴² U.S. Library of Congress, Congressional Research Service, *Department of Homeland Security Reorganization: The 2SR Initiative*, by Harold C. Relyea and Henry B. Hogue, CRS Report RL33042 (Washington, DC: Office of Congressional Information and Publishing, August 19, 2005), 1.

⁴³ Relyea and Hogue, *The 2SR Initiative*, 1.

⁴⁴ Department Six Point Agenda, U.S. Department of Homeland Security, accessed September 25, 2012, http://ipv6.dhs.gov/xabout/history/editorial_0646.shtm.

⁴⁵ Relyea and Hogue, *The 2SR Initiative*, 4–9.

⁴⁶ Relyea and Hogue, *The 2SR Initiative*, 8, 11.

⁴⁷ Relyea and Hogue, *The 2SR Initiative*, 8.

⁴⁸ Relyea and Hogue, *The 2SR Initiative*, 8.

to “flatten” the organization.⁴⁹ Some members of Congress expressed concern over the increase from 22 to 27 direct reporting units to the Secretary.⁵⁰ The House Committee on Homeland Security thought “a Secretary less able or influential than Secretary Chertoff may become overwhelmed.”⁵¹ Additionally, other members of Congress found the reorganization quite extensive and asserted that Secretary Chertoff may be overstepping the authority designated to him in Section 872 of the Homeland Security Act of 2002.⁵² The changes, however, took effect and are depicted in Figure 1 (before) and Figure 2 (after).

Department of Homeland Security Original Organization Chart, March 2003

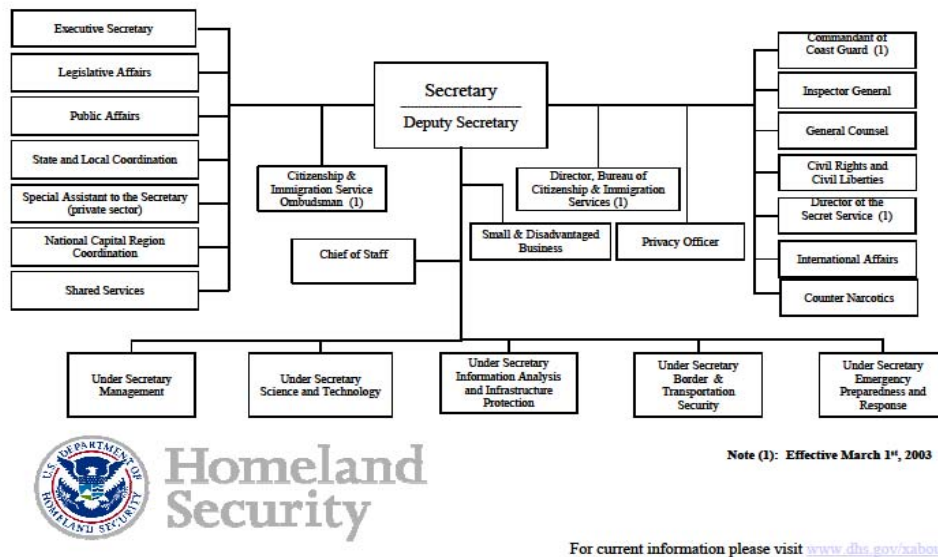


Figure 1. Department of Homeland Security Prior to 2SR⁵³

⁴⁹ Relyea and Hogue, *Department of Homeland Security Reorganization: The 2SR Initiative*, 16.

⁵⁰ Relyea and Hogue, *Department of Homeland Security Reorganization: The 2SR Initiative*, 16.

⁵¹ Relyea and Hogue, *Department of Homeland Security Reorganization: The 2SR Initiative*, 16.

⁵² Relyea and Hogue, *Department of Homeland Security Reorganization: The 2SR Initiative*, 15.

⁵³ Figure 1 from Department of Homeland Security: Organizational Chart, March 2003, U.S. Department of Homeland Security, accessed September 28, 2012, <http://ipv6.dhs.gov/xlibrary/assets/dhs-org-chart-2003.pdf>.

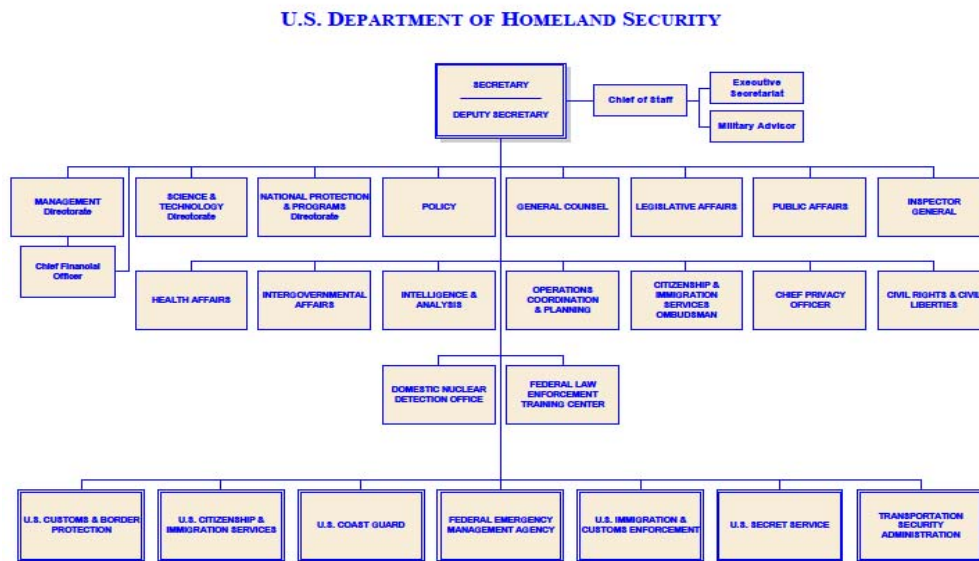


Figure 2. Department of Homeland Security: Current Structure⁵⁴

Almost immediately after implementing the changes prompted by the 2SR the department underwent another series of major reforms. At the end of August 2005, Hurricane Katrina devastated the Gulf Coast and the public viewed the federal government response, in particular FEMA's, as slow and unorganized. Many members of Congress felt that DHS had become too terrorism focused and could no longer effectively respond to "all-hazards."⁵⁵ Therefore, they enhanced FEMA's ability to respond to disasters through Public Law 109–295, or The Post Katrina Emergency Reform Act of 2006. As envisioned by the 2SR, FEMA remained a direct reporting unit within DHS. The Secretary, however, could no longer move or change FEMA's structure during future reorganizations (as previously allowed under Section 872 of the Homeland Security Act of 2002.)⁵⁶ The Post Katrina Emergency Reform Act of 2006 statutorily mandated

⁵⁴ Figure 2 from U.S. Department of Homeland Security Organizational Chart, accessed September 28, 2012, <http://ipv6.dhs.gov/xlibrary/assets/dhs-orgchart.pdf>.

⁵⁵ Bea, *Federal Emergency Management Policy Changes After Hurricane Katrina: A Summary of Statutory Provisions*, 5.

⁵⁶ Bea, *Federal Emergency Management Policy Changes After Hurricane Katrina: A Summary of Statutory Provisions*, 6; Relyea and Hogue, *Department of Homeland Security Reorganization: The 2SR Initiative*, Summary.

FEMA's structure and position within DHS. FEMA also absorbed many of the previous Preparedness Directorate's functions which further increased its autonomy as the primary disaster relief organization.⁵⁷ Finally, the FEMA Director could now report directly to Congress, as the heads of the USCG and the Secret Service were authorized to do.⁵⁸

The structure of DHS remains largely unchanged since the Post Katrina Emergency Reform Act. The budget, however, has grown considerably, from \$30.5 billion in 2002 to a peak of \$50.6 billion in 2008.⁵⁹ Recent years have suffered small cuts bringing the 2013 estimate to approximately \$45 billion.⁶⁰ Although DHS's budget has grown by approximately 50 percent over the last 11 years its funding remains lower than the budget of most other executive branch departments. The Departments of Health and Human Services, Defense, Treasury, Agriculture, Veteran' Affairs, Labor, Transportation, and Education all have larger budgets.⁶¹ Additionally, DHS's budget only amounts to 1.2 percent of the \$3.84 trillion national budget estimated for 2013.⁶² The relatively small budget provides funding for all the major operational elements of homeland security including the USCG, Secret Service, ICE, and CBP.⁶³ The budget is of particular importance because the "power of the purse" is one of Congress' primary methods of exerting influence over executive branch agencies.

B. CONGRESSIONAL OVERSIGHT IN THEORY AND PRACTICE

Congress' oversight responsibilities are implicit throughout the Constitution. Its duties are reinforced through a system of checks and balances. The legislative branch

⁵⁷ Bea, *Federal Emergency Management Policy Changes After Hurricane Katrina: A Summary of Statutory Provisions*, 5.

⁵⁸ Bea, *Federal Emergency Management Policy Changes After Hurricane Katrina: A Summary of Statutory Provisions*, 6.

⁵⁹ From downloadable excel file "Table 5.2 Budget Authority by Agency 1976–2017," at Historical Tables, Office of Management and Budget, accessed September 29, 2012, <http://www.whitehouse.gov/omb/budget/Historicals>.

⁶⁰ "Table 5.2 Budget Authority by Agency 1976–2017."

⁶¹ "Table 5.2 Budget Authority by Agency 1976–2017."

⁶² "Table 5.2 Budget Authority by Agency 1976–2017."

⁶³ "Department of Homeland Security" PDF file at The Budget, Office of Management and Budget, accessed September 29, 2012, <http://www.whitehouse.gov/omb/budget/Overview>.

carries the power to declare war, authorize the budget, and make laws.⁶⁴ The responsibility to oversee the executive is further explained in Federalist Paper No. 51, in which James Madison wrote: “In republican government, the legislative authority necessarily predominates.”⁶⁵ Not only does Congress have the authority to hold the executive branch accountable for its actions, it also has the prerogative to do so however the members see fit. Scholar Walter J. Olzesek summarizes the different techniques Congress has employed in his Congressional Research Service Report, *Congressional Oversight: An Overview*.⁶⁶ He lists ten different methods of congressional oversight, which are as follows: hearings and investigations, the authorizing process, the appropriations process, Inspectors General (IG), Government Accountability Office (GAO), reporting requirements, Senate confirmation process, program evaluation, casework, and impeachment and removal.⁶⁷

Matthew D. McCubbins and Thomas Schwartz would classify these ten oversight methods into two their general categories, “police patrol” and “fire alarm.”⁶⁸ The term “police patrol” refers to oversight conducted on a routine basis, such as the authorizing and appropriations process, standard reporting required by law, and periodic requests for information.⁶⁹ On the other hand, “fire alarm” oversight is exercised through investigations, hearings, and in extreme cases impeachment.⁷⁰ McCubbins and Schwartz argue that both forms of oversight are appropriate and a preference for either kind does

⁶⁴ U.S. Const. art. I, sec. 8, accessed 25 May 2012, http://constitution.org/constit_.htm.

⁶⁵ James Madison, “Federalist #51,” in *The Federalist Papers*, para. 6, accessed 25 May 2012, <http://www.constitution.org/fed/federa51.htm>

⁶⁶ U.S. Library of Congress, Congressional Research Service, *Congressional Oversight: An Overview*, by Walter J. Olzesek, CRS Report R41079 (Washington, DC: Office of Congressional Information and Publishing, February 22, 2010).

⁶⁷ Olzesek, *Congressional Oversight: An Overview*, 9–14.

⁶⁸ Mathew D. McCubbins and Thomas Schwartz, “Congressional Oversight Overlooked: Police Patrols and Fire Alarms,” *American Journal of Political Science* 28, no. 1 (1984): 166.

⁶⁹ McCubbins and Schwartz, “Congressional Oversight Overlooked: Police Patrols and Fire Alarms,” 166.

⁷⁰ McCubbins and Schwartz, “Congressional Oversight Overlooked: Police Patrols and Fire Alarms,” 166.

not imply that Congress is failing to supervise the executive.⁷¹ They argue that Congress simply prefers “fire alarm” oversight.⁷² Additionally, they state that previous scholars only focus on “police patrol” oversight when they assert that Congress is negligent in its duties.⁷³ Although McCubbins and Schwartz present a compelling argument, they do not adequately address the idea that oversight should prevent executive abuses and failures in the first place. The most effective way to prevent error is a vigorous “police patrol” oversight policy. McCubbins and Schwartz may be correct in asserting that Congress is not negligent by conducting “fire alarm” oversight, however, it is not the best way to do business. In the case of homeland security, Congress has chosen to pursue “police patrol” policy first, and “fire alarm” policy by exception.

Equally as important as the methods are the motivations for oversight. In his seminal 1974 work, *Congress: The Electoral Connection*, David R. Mayhew asserts that members of Congress are driven solely by their desires for re-election.⁷⁴ Similar to the simplifying economic assumption that all investors are rational, Mayhew assumes that all members are “single-minded seekers of reelection.”⁷⁵ He then goes on to examine what effect this assumption has on legislative activity. Three types of legislative activity he describes are “advertising,” “credit claiming,” and “particularized benefits.”⁷⁶ While the first two activities are self-defining, the third activity refers to the benefits members of Congress bring to their constituencies.⁷⁷ All three of these are activities of particular interest to DHS oversight because homeland security efforts often span from the federal down to the local level. Therefore, any perceived benefits a locality receives, in the way of increased protection or federal funding, will shine favorably on their local member of

⁷¹ McCubbins and Schwartz, “Congressional Oversight Overlooked: Police Patrols and Fire Alarms,” 170.

⁷² McCubbins and Schwartz, “Congressional Oversight Overlooked: Police Patrols and Fire Alarms,” 170.

⁷³ McCubbins and Schwartz, “Congressional Oversight Overlooked: Police Patrols and Fire Alarms,” 176.

⁷⁴ David R. Mayhew, *Congress: The Electoral Connection* (New Haven: Yale University Press, 1974).

⁷⁵ Mayhew, *Congress: The Electoral Connection*, 5.

⁷⁶ Mayhew, *Congress: The Electoral Connection*, 49–60.

⁷⁷ Mayhew, *Congress: The Electoral Connection*, 53.

Congress. A counter-argument that Mayhew does not address particularly well is that a member of Congress' primary duty is in fact to represent his constituents, not continuously sacrifice their well-being for the greater good of the country. At some level a member of Congress must believe he or she is the best individual for the job, therefore it is in the best interest of his district or state to get re-elected. Additionally, the overall dynamics of differing regional needs, party politics, and idealism should balance out the election ambitions of members of Congress.

In addition to electoral motivations, many scholars accuse members of Congress of being unwilling to give up their committee jurisdictions, resulting in "turf battles" for influence and authority. Diana Evans challenges both these assertions.⁷⁸ She does not dispute that members of Congress may be interested in maintaining power; however, she writes they also work with and for other motivations, including public welfare.⁷⁹ She demonstrates this point through a series of case studies in which members of Congress passed legislation that was detrimental to business for their primary lobbyists and campaign supporters.⁸⁰ These officials did so to promote public welfare rather than to seek re-election or increase power.⁸¹ Evans' arguments reinforce the current homeland security oversight structure. For example, food security falls under the umbrella of homeland security. Therefore, the agricultural committees in both the House and the Senate have a vested interest in how DHS plans to secure the food supply. Furthermore their interest cannot simply be attributed to a desire to retain power, their programmatic interest is clear in the name of the committee.

C. CONGRESSIONAL OVERSIGHT OF DHS

The House of Representatives enacted formal oversight mechanisms shortly after President Bush signed The Homeland Security Act of 2002. On January 7, 2003, prior to DHS's March commencement of operations, the House established the Select Committee

⁷⁸ Diana Evans, "Congressional Oversight and the Diversity of Member's Goals," *Political Science Quarterly* 109, no. 4 (1994): 670.

⁷⁹ Evans, "Congressional Oversight and the Diversity of Member's Goals," 670, 684.

⁸⁰ Evans, "Congressional Oversight and the Diversity of Member's Goals," 673–686.

⁸¹ Evans, "Congressional Oversight and the Diversity of Member's Goals," 684.

on Homeland Security.⁸² House leadership announced nominations to the committee on February 12.⁸³ Membership would consist of 50 representatives, with a breakdown of 27 republicans and 23.⁸⁴ This format held until the 2004 release of the *9/11 Commission Report* after which the committee was elevated to permanent standing status on January 4, 2005.⁸⁵ Membership was reduced to 19 majority members and 14 minority members.⁸⁶ The House Appropriations Committee (HAC) also has a corresponding Homeland Security Subcommittee.⁸⁷ Despite these changes many critics assert that the Homeland Security Committee lacks authority over many of the most important parts of DHS.

In January 2003, the Senate initially gave DHS oversight responsibilities to the Governmental Affairs Committee.⁸⁸ This temporary arrangement, similar to the House, was maintained until the release of the *9/11 Commission Report*. The Senate also responded to the report's call to create a "single principal point of oversight," however, its changes were not as drastic as the House's. DHS jurisdiction remained with the Governmental Affairs Committee, which was renamed the Homeland Security and Governmental Affairs Committee in January 2005.⁸⁹ There are currently nine majority members, eight minority members and a corresponding Homeland Security

⁸² U.S. Library of Congress, Congressional Research Service, *House Select Committee on Homeland Security: A Fact Sheet*, by Judy Schneider, CRS Report RS21431 (Washington, DC: Office of Congressional Information and Publishing, October 4, 2004), 1.

⁸³ Schneider, *House Select Committee on Homeland Security: A Fact Sheet*, 2.

⁸⁴ Schneider, *House Select Committee on Homeland Security: A Fact Sheet*, 2.

⁸⁵ Christopher Shays, "Congressional Oversight over Homeland Security and the Dynamics of Appropriation," in *Homeland Security Handbook*, ed. David G. Kamien (New York: McGraw-Hill, 2006), 277.

⁸⁶ Committee on Homeland Security, United States House of Representatives, accessed September 29, 2012, <http://homeland.house.gov/about/membership>.

⁸⁷ Homeland Security, The U.S. House of Representatives Committee on Appropriations, accessed September 29, 2012, <http://appropriations.house.gov/subcommittees/subcommittee/?IssueID=34797>.

⁸⁸ History, U.S. Senate Committee on Homeland Security and Governmental Affairs, accessed September 29, 2012, <http://www.hsgac.senate.gov/about/history>.

⁸⁹ History, U.S. Senate Committee on Homeland Security and Governmental Affairs, accessed September 29, 2012.

Subcommittee on the Senate Appropriations Committee (SAC).⁹⁰ Like its House counterpart, the Senate Homeland Security and Governmental Affairs Committee has authorizations authority for DHS. Unfortunately, also like the House, the Senate committee does not have oversight authority of several major operational elements of DHS. Table 3 contains the major operational elements of DHS and which congressional committees hold oversight jurisdiction over them:

Major Operational Element	Senate Committee	House Committee
U.S. Customs and Border Protection	Shared by Finance and Homeland Security/Governmental Affairs	Shared with Ways and Means
U.S. Immigration and Customs Enforcement	Shared by Finance, Judiciary, Homeland Security/Governmental Affairs	Shared with Judiciary
U.S. Citizenship and Immigration Services	Judiciary	Judiciary
The Transportation Security Administration	Commerce, Science and Transportation	Homeland Security
Federal Law Enforcement Training Center	Judiciary	Homeland Security ⁹¹
The Federal Emergency Management Agency	Environment and Public Works	Transportation And Infrastructure
U.S. Coast Guard	Commerce, Science and Transportation	Transportation And Infrastructure
U.S. Secret Service	Judiciary	Homeland Security ⁹²

Table 3. Illustration of Overlapping Jurisdictions⁹³

⁹⁰ About the Committee, U.S. Senate Homeland Security And Governmental Affairs Committee, accessed September 29, 2012, <http://www.hsgac.senate.gov/about>; Subcommittee on Homeland Security, United States Senate Committee on Appropriations, accessed September 29, 2012, <http://www.appropriations.senate.gov/sc-homeland-security.cfm>

⁹¹ *The Rules of the House of Representatives* is unclear on which committees have jurisdiction over the Federal Law Enforcement Training Center (FLETC). House Homeland Security Committee has at least partial jurisdiction over FLETC, however, there are likely other committees that also claim jurisdiction.

⁹² *The Rules of the House of Representatives* is unclear on which committees have jurisdiction over the Secret Service. House Homeland Security Committee has at least partial jurisdiction over the Secret Service, however, there are likely other committees that also claim jurisdiction.

⁹³ Table 3 created by author using information obtained from the following sources: U.S. Library of Congress, Congressional Research Service, *S.Res. 445: Senate Committee Reorganization for Homeland Security and Intelligence Matters*, Paul S. Rundquist and Christopher M. Davis, CRS Report R21955 (Washington, DC: Office of Congressional Information and Publishing, February 22, 2010); United States Representatives, <http://www.house.gov/>; United States Senate, <http://www.senate.gov/>; United States Senate, *Senate Manual: Containing the Standing Rules, Orders, Laws, and Resolutions Affecting The Business of the United States Senate* (Washington, DC: GPO, 2011).; United States House of Representatives, *Rules of the House of Representatives* (Washington, DC: GPO, 2011).

The legally mandated structure of DHS and the objectives of the department drive congressional oversight. After Congress passed the Homeland Security Act of 2002, President Bush issued Homeland Security Presidential Directives (HSPD) – 7 directing DHS to develop security programs in coordination with several other federal agencies.⁹⁴ DHS has expanded on the guidance issued in HSPD-7 to develop the National Infrastructure Protection Plan (NIPP). Within the NIPP, DHS assigns specific security responsibilities to eighteen different federal Sector Specific Agencies (SSAs).⁹⁵ DHS serves primarily as a coordinator and sets standards for the nation’s homeland security efforts. The departments DHS coordinates with include but are not limited to: Department of Health and Human Services, Department of the Interior, Environmental Protection Agency, and the Department of Energy.⁹⁶ Once again this illustrates the wide-spread mission of DHS justifying its diverse congressional oversight structure.

The *Rules of the House of Representatives* and the *Senate Manual* are the two primary documents that govern committee jurisdictions. In each of these documents committee jurisdictions are primarily defined by executive branch functions rather than agencies. The *Senate Manual* mentions several DHS agencies by name in Title I Sec 46.b.⁹⁷ It does so, however, to state that the Homeland Security and Governmental Affairs Committee specifically does not have jurisdiction over TSA, FLETC, USCG, TSA, and USCIS.⁹⁸ Additionally, customs and immigration are sub-divided by function in both the House and the Senate which effectively divides oversight of CBP and ICE between different several committees. For example, in the House, immigration is shared between the Homeland Security, Judiciary, and Financial Services Committees.⁹⁹ It

⁹⁴ President George W. Bush, Homeland Security Presidential Directive – 7, 17 Dec 2003, accessed May 25, 2012, http://www.dhs.gov/xabout/laws/gc_1214597989952.shtm.

⁹⁵ Department of Homeland Security, *National Infrastructure Protection Plan: Partnering to enhance protection and resiliency* (Washington, DC, 2009), 3.

⁹⁶ President George W. Bush, Homeland Security Presidential Directive – 7; Department of Homeland Security, National Infrastructure Protection Plan.

⁹⁷ *Senate Manual*, 46.

⁹⁸ *Senate Manual*, 46.

⁹⁹ *Rules of the House of Representatives*, 7.

appears that dividing oversight of the executive by function, rather than agency, makes overlapping jurisdictions inevitable. On the other hand, overlapping jurisdictions is certainly better than having gaps.

D. COMMON CRITIQUES OF CONGRESSIONAL OVERSIGHT OF HOMELAND SECURITY

Former DHS Secretary Michael Chertoff vigorously attempted to reduce the overlapping jurisdictions in congressional oversight of DHS. His primary arguments are summarized in a September 4, 2007, letter to Representative Peter King, the ranking member of the House Committee on Homeland Security. Within the letter Chertoff summarizes the number of hearings, testimonies, briefings, and questions for record DHS has provided for Congress. He states the requests are “burdensome” and distract from “meeting operational mission demands.”¹⁰⁰ Although there is no doubt that responding to congressional requests is time consuming, Chertoff does not give any specifics on tasks that were sacrificed to meet Congress’ demands.

Perhaps the most quoted piece of government documentation regarding congressional oversight of homeland security is the *9/11 Commission Report*. In addition to the recommendation for a “single, principal point of oversight,” the report calls for a single authorizing source for DHS.¹⁰¹ Research conducted for this thesis suggests that although DHS should not receive appropriations and authorizations from a variety of committees, delegating this responsibility to a single committee is impossible. Even the Department of Defense, with a much less diverse mission, answers to at least thirty-six congressional committees and subcommittees.¹⁰²

Almost all scholarly analysis of congressional oversight of the Department of Homeland Security asserts that the current structure is dysfunctional. Norman J. Ornstein and Thomas E. Mann state that although Congress demands several briefings a week, it

¹⁰⁰ Secretary Michael Chertoff to Representative Peter King, September 4, 2007, Office of the Secretary of the Department of Homeland Security, accessed May 20, 2012, <http://www.hsdl.org/?view&did=683475>.

¹⁰¹ *The 9/11 Commission Report*, 421.

¹⁰² “Untangling the Web: Congressional Oversight and the Department of Homeland Security,” 2.

has failed to conduct any real oversight of homeland security. They argue that the House Committee on Homeland Security and the Senate Committee on Homeland Security and Governmental Affairs are “relative(ly) powerless.”¹⁰³ Mann and Ornstein, however, state the problem pervades throughout Congress and is not limited to homeland security. In a more targeted piece, Patrick S. Roberts uses the homeland security granting process to demonstrate the dysfunctional nature of oversight.¹⁰⁴ He argues that grant money is disproportionately issued to low risk areas and low probability problems such as terrorism.¹⁰⁵ In contrast to Diana Evans’ argument, summarized above, Roberts cites “pork barrel spending” and “reelection ambitions” as the causes with little regard for other motives or measures.¹⁰⁶ The problem with Robert’s argument is that he fails to acknowledge that the same criticism can be applied to other government programs such as defense, energy, and transportation, though he wants to single out homeland security as an example of a particularly poorly overseen organization.

David Rittgers provides the harshest criticism of DHS, stating the department should be abolished.¹⁰⁷ Among the reasons he cites are staggering bureaucracy, inefficiency, employee dissatisfaction, “pork barrel” spending, and invasion of civil liberties.¹⁰⁸ Although these are all problems that DHS must address, abolishing the department is too rash. Homeland security is a mission common to many federal agencies and a coordinating lead agency is necessary. Despite DHS’s complex structure Congress must conduct effective oversight. A Booz Allen Hamilton report summarizing the management lessons of 9/11 notes that “the majority of people we interviewed felt the creation of the department was the right decision... (but) the merger initially resulted

¹⁰³ Norman J. Ornstein and Thomas E. Mann, “When Congress Checks Out,” *Foreign Affairs* 85, no. 6 (2006): 6.

¹⁰⁴ Patrick S. Roberts, “Shifting Priorities: Congressional Incentives and the Homeland Security Granting Process,” *Review of Policy Research* 22, no. 4 (2005) 437–439.

¹⁰⁵ Roberts, “Shifting Priorities: Congressional Incentives and the Homeland Security Granting Process,” 439.

¹⁰⁶ Roberts, “Shifting Priorities: Congressional Incentives and the Homeland Security Granting Process,” 437.

¹⁰⁷ David Rittgers, “Abolish the Department of Homeland Security,” *Policy Analysis*, no. 683. (2011).

¹⁰⁸ Rittgers, “Abolish the Department of Homeland Security,” 1,7.

mission overlaps and policy shortfalls, confused functional and operational roles.”¹⁰⁹ The “mission overlaps” and confusion created by the structure of DHS is best quantitatively documented by Timothy Balunis and William Hemphill. Through the use of an index for jurisdictional clarity they demonstrate that DHS has the most fragmented congressional oversight in history.¹¹⁰ In their analysis they compare DHS to three other federal agencies with historically fragmented oversight: Defense, Transportation, and Energy.¹¹¹ While it may be true that DHS may suffer from the most fragmented oversight, it is also hard to dispute that DHS has the most diverse mission of any federal agency. The authors address this issue attributing the diversity of DHS’s mission to the lack of a clear definition for homeland security.¹¹²

A few broad underlying themes are apparent after a review of literature pertaining to homeland security. Although scholars and policy makers often refer to the number of hearings, briefings, testimonies, and reports DHS must prepare, they only focus on numbers and not the content. A second common theme is the authorizations and appropriations process. The arguments citing the disparate funding of DHS do carry merit. As the case study on the oversight of intelligence demonstrates in Chapter III, separate authorizations and appropriations provides executive branch agencies loopholes to exploit and circumvent oversight. Finally, what is notably absent from most literature is a discussion of how an agency with such widespread coordinating authority across the federal government could receive oversight from just one committee.

E. CONCLUSION

Even before the 9/11 attacks multiple expert panels recognized the necessity of a department designed to engage a changing post-Cold War environment. After the attacks the need for the agency became urgent and obvious. The federal government quickly

¹⁰⁹ Booz Allen Hamilton, *Securing the Future: Management Lessons of 9/11*, 1.

¹¹⁰ Timothy Balunis and William Hemphill, “Congress and Homeland Security,” in *Congress and the Politics of National Security*, edited by David P. Auerswald and Colton C. Campbell (Cambridge: Cambridge University Press, 2012) 100–120.

¹¹¹ Balunis and William Hemphill, “Congress and Homeland Security.”

¹¹² Balunis and William Hemphill, “Congress and Homeland Security,” 115.

created DHS, loosely modeling it after recommendations made by the Hart-Rudman Commission. Since its initial creation the department has undergone multiple major reorganizations and its mission continues to grow. DHS's mission has expanded from fighting terrorism to engaging "all hazards." Congress' oversight plan, however, has not undergone such rapid changes. Both the House and Senate divide jurisdiction of DHS agencies between several different committees. As a result, many scholars and journalists have doled out harsh criticism of the legislative branch. They asserted that Congress' disparate oversight provides conflicting direction and creates unnecessary work for DHS. Critics fail to concede that Congress implements several tenets of strong oversight in its review of DHS activities.

III. CONGRESSIONAL OVERSIGHT OF INTELLIGENCE

(A Congressman) who had been dozing through the early part of a briefing, suddenly awoke and demanded to know ‘what the hell [the Agency] was doing in covert parliamentary operations.’ When it was explained that the chart in front of him referred to covert ‘paramilitary’ activities, he expressed his relief to the briefers, telling them they ‘don’t know enough about it [parliamentary activity]. . . to be fooling around with [it].’¹¹³

Although there have been occasional bright spots in congressional oversight of the Central Intelligence Agency, the anecdote at the top of this chapter typifies how poorly Congress has generally handled its responsibilities. Its deficient oversight failed to prevent sabotaging of the democratic processes of other countries, infringements on domestic civil liberties, and violations of the U.S. Constitution. In most cases members of Congress were unable to thwart these activities because they were simply not aware they were occurring. From the birth of the modern intelligence community, starting with the passing of the National Security Act of 1947, Congress lacked the ability and the structure to conduct proper intelligence oversight. Congress’ statutes, formal procedures, and informal practices for intelligence oversight diminish rather than reinforce its explicit and implicit constitutional powers.

A common argument proposed by the executive branch is the president is the sole executor of foreign policy, thus he and his agencies may conduct covert operations and intelligence collection efforts unfettered by Congress.¹¹⁴ An examination of the Constitution and the Federalist Papers demonstrates this is hardly true. Unfortunately congressional leaders of the 1940s and 1950s succumbed to pressure from the executive branch. They did not use effective oversight tools such as hearings, the GAO, and an IG because they thought they may be overstepping their bounds.¹¹⁵ Thus, they entered an

¹¹³ L. Britt Snider, *The Agency and the Hill: CIA’s Relationship with Congress, 1946–2004* (Washington: GPO, 2008), 109.

¹¹⁴ Amy B. Zegart, *Flawed by Design: The Evolution of the CIA, JCS, NSC* (Stanford: Stanford University Press, 1999) 28.

¹¹⁵ Snider, *The Agency and the Hill*, 7, 15.

irreparable situation where they were unable to conduct oversight because they lacked the power to get information.¹¹⁶ The executive branch could withhold information citing secrecy as a reason and Congress was powerless to force its hand.

A. BEFORE THE INTELLIGENCE COMMITTEES: 1947–1976

The National Security Act of 1947 transformed the Central Intelligence Group (CIG formed in 1946, in response to Pearl Harbor) into the modern day CIA.¹¹⁷ Whereas the CIG was an interdepartmental working group, the CIA became an independent establishment.¹¹⁸ The legislators who wrote the National Security Act of 1947 were primarily concerned with reforming the Department of Defense, therefore they paid little attention to Section 202, which established the CIA.¹¹⁹ Thus started a decades long trend of vague legislation that allowed the executive considerable latitude in its actions. The subsequent CIA Act of 1949 was the department's true "enabling" legislation.¹²⁰ As a result of the law, "the Agency would be able to expend funds without regard to the laws and regulations that governed the expenditure of government funds and, indeed, could account for those funds based solely on the certificate of the DCI."¹²¹ For all practical purposes, by passing this legislation Congress forfeited its power of the purse. Through the authorizations and appropriations process Congress has significant impact on which programs are funded, how many employees an organization has, and what activities they can pursue. Without adhering to the normal accounting procedures the executive branch could allocate funds through the CIA however they saw fit. Lacking specific details on operations Congress could only influence policy by cutting the budget at large. This course of action was unlikely because most representatives and senators felt the CIA was

¹¹⁶ Amy B. Zegart, "The Domestic Politics of Irrational Intelligence Oversight," *Political Science Quarterly* 126, no. 1 (2011): 2.

¹¹⁷ Robert Kennedy, *Of Knowledge and Power: The Complexities of Knowledge and Power* (Westport: Greenwood, 2008) 179.

¹¹⁸ Kennedy, *Of Knowledge and Power: The Complexities of Knowledge and Power*, 3.

¹¹⁹ David M. Barrett, *The CIA and Congress: The Untold Story from Truman to Kennedy* (Lawrence: University of Kansas, 2005), 9–10.

¹²⁰ Snider, *The Agency and the Hill*, 141.

¹²¹ Snider, *The Agency and the Hill*, 141.

necessary.¹²² With both pieces of legislation, the two key issues were ambiguous language and expanding the authority of the executive while diminishing the power of the legislative.

The CIA also declared itself immune to audits by the General Accounting Office (later renamed the Government Accountability Office).¹²³ The Agency's third Director of Central Intelligence (DCI), "RADM Hillenkoetter had taken the position in 1948 that the Agency's statutory authority to spend appropriated funds for operational purposes without the requirement of a 'voucher' - a document showing how the funds had been spent - in effect exempted such funds from audit by the GAO."¹²⁴ By weakening its power of the purse, Congress surrendered yet another extremely powerful oversight tool. The GAO is instrumental in identifying fraud, waste, abuse, illegal activity, and the general effectiveness of federal agencies.¹²⁵ The issue of opening the CIA to GAO audits has risen periodically over last 65 years, but the Agency has been able to obstruct any such efforts.¹²⁶ To this end, the CIA has cited both the statutory authority mentioned above and the need for secrecy.¹²⁷ In regard to the secrecy argument, the GAO has access to the Department of Defense's highly classified Special Access Programs (SAP) but still has limited access to the CIA's operations.¹²⁸ Chairman Rockefeller (D-West Virginia) questioned this policy in a Senate Select Committee on Intelligence (SSCI) hearing in

¹²² Barrett, *The CIA and Congress*, 9; Snider, *The Agency and the Hill*, 138.

¹²³ Snider, *The Agency and the Hill*, 20.

¹²⁴ Snider, *The Agency and the Hill*, 20.

¹²⁵ About GAO. U.S. Government Accountability Office. <http://www.gao.gov/about/index.html>.

¹²⁶ Mentioned several times in Snider's *The Agency and the Hill*. However, since Snider's book has been published the question of GAO audits has been addressed multiple times. Additional information can be found on GAO audits since 2004 in U.S. Library of Congress, Congressional Research Service, *Congressional Oversight of Intelligence: Current Structure and Alternatives*, by L. Elaine Halchin and Frederick M. Kaiser, CRS Report RL32525 (Washington, DC: Office of Congressional Information and Publishing, March 14, 2012).

¹²⁷ Halchin, *Congressional Oversight of Intelligence*, 26–27.

¹²⁸ Halchin, *Congressional Oversight of Intelligence*, 27–30.

2007: “These programs are known to hundreds if not thousands of executive branch employees... only eight members of the legislative branch are trustworthy enough to know about them.”¹²⁹

In addition to the weak statutes, the formal CIA oversight procedures Congress enacted prior to 1976 were also ineffective. Until 1976, the House and Senate Armed Services Committees provided oversight for CIA operations, while intelligence appropriations were handled by the Defense Appropriations Subcommittees.¹³⁰ A few key leaders on the HASC and SASC, coupled with the leaders of the Appropriations Committees, were the only ones who regularly interacted with the CIA.¹³¹ Most members of Congress had little to no involvement in overseeing the Agency.¹³² Additionally, the leaders of the HASC, SASC, HAC, and SAC were very busy individuals who were typically large proponents of the Agency and its operations.¹³³ As a result, the CIA often received very little critical oversight.¹³⁴

During the first decade of the Agency’s existence, the SASC held roughly two hearings per year, and the SAC held around one hearing per year, on the CIA.¹³⁵ Even when these hearings were held, the committee leaders failed to ask the tough questions. Former SASC Committee Chairmen, Senator Leverett Saltonstall’s (R-Massachusetts) famous quote regarding intelligence oversight emerged from this timeframe. When asked on the Senate floor if the CIA officials refused to answer any of his questions, he replied: “It is not a question of reluctance on the part of CIA officials to speak to us. Instead, it is a question of our reluctance, if you will, to seek information and knowledge on subjects which I personally, as a Member of Congress and as a citizen, would rather not have.”¹³⁶

¹²⁹ Senate Select Committee on Intelligence, *Congressional Oversight of Intelligence Activities: Hearing before the Select Committee on Intelligence*, 110th Cong., 1st sess., November 13th, 2007.

¹³⁰ Kennedy, *Of Knowledge and Power: The Complexities of Knowledge and Power*, 179–180.

¹³¹ Kennedy, *Of Knowledge and Power: The Complexities of Knowledge and Power*, 180.

¹³² Kennedy, *Of Knowledge and Power: The Complexities of Knowledge and Power*, 180.

¹³³ Kennedy, *Of Knowledge and Power: The Complexities of Knowledge and Power*, 180.

¹³⁴ Kennedy, *Of Knowledge and Power: The Complexities of Knowledge and Power*, 180.

¹³⁵ Snider, *The Agency and the Hill*, 15–16.

¹³⁶ Snider, *The Agency and the Hill*, 16.

Unfortunately this attitude, coupled with a weak formal oversight structure, set very damaging precedents. By not demanding disclosure of the CIA's activities while the organization was still in its infancy, Congress set the stage for the denying and hiding of information in the future. The executive branch was inclined to withhold information to protect its policy choices, and Congress failed to fight these tendencies.¹³⁷

As result of Congress' reluctance to gather the information required to conduct effective oversight many intelligence abuses ensued. The 1972 Watergate scandal was the event that triggered an era of reform in the intelligence community.¹³⁸ In preparation for the associated congressional hearings, Director of Central Intelligence James Schlesinger had the Agency prepare a document that is famously known as the "family jewels."¹³⁹ The "family jewels" contained various details on sabotaging foreign democracies and domestic spying. The document was eventually leaked and published in Seymour Hersh's article in *The New York Times*. The story contained details on flagrant violations of the Constitution such as wire-tapping the communications of U.S. citizens.¹⁴⁰ Consequently, Congress formed the Church Committee (Senate) and the Pike Committee (House) to investigate these abuses. The findings of the Church and Pike Committees resulted in drastic changes in formal intelligence oversight procedures. The first significant statutory change in intelligence oversight, however, was already set for enactment prior Hersh's story in the *The New York Times*.¹⁴¹

The 1974 Hughes-Ryan Amendment passed eight days after the "family jewels" became front-page news.¹⁴² Congress proposed the law after they learned of the CIA's operations that involved interference with domestic politics in Chile.¹⁴³ The law mandated that all covert operations must be approved by a presidential "finding."¹⁴⁴

¹³⁷ Kennedy, *Of Knowledge and Power*, 201.

¹³⁸ Snider, *The Agency and the Hill*, 28.

¹³⁹ Snider, *The Agency and the Hill*, 16.

¹⁴⁰ Snider, *The Agency and the Hill*, 33.

¹⁴¹ Snider, *The Agency and the Hill*, 32.

¹⁴² Snider, *The Agency and the Hill*, 33.

¹⁴³ Zegart, *Flawed by Design*, 196.

¹⁴⁴ Kennedy, *Of Knowledge and Power*, 181

Additionally, the Armed Services Committees, Appropriations Committees, and Foreign Affairs Committees must all be informed of these findings.¹⁴⁵ Although the Hughes-Ryan Amendment was a step in the correct direction, like earlier legislation, it was also too vague and left ample room for intelligence abuses. The executive branch subsequently exploited the fact that there was no time frame associated with reporting, that the findings did not have to be in writing, and that they did not need to be in advance.¹⁴⁶ Congress' statutory measures still lacked the power to force the disclosure of intelligence activities.

The results of the Church and Pike Committees' findings prompted the creation of the SSCI and the House Permanent Select Committees on Intelligence (HPSCI). For the first time a group of members of Congress would have intelligence oversight as their primary duty. The committee's primary responsibilities included creating an Intelligence Authorization Bill, the first of which passed in 1979.¹⁴⁷ Appropriating authority, however, remained with the Defense Appropriations Subcommittee and the intelligence budget would remain hidden within the defense budget.¹⁴⁸ With this arrangement the intelligence committees still lacked the power to get information from the CIA, as the intelligence community could circumvent them and get funding from the Appropriations Committees.¹⁴⁹

Finally, the informal practices that arose during this early period have also inhibited the disclosure of information crucial to proper oversight. The "Gang of Four" notification procedure first came into practice prior to the establishment of the

¹⁴⁵ Kennedy, *Of Knowledge and Power*, 181.

¹⁴⁶ Kennedy, *Of Knowledge and Power*, 185; Afsheen John Radsan, "An Overt Turn on Covert Action," *St. Louis University Law Journal* 53 no. 485 (2009): 522, http://slu.edu/Documents/law/Law%20Journal/Archives/Radsan_Article.pdf.

¹⁴⁷ Snider, *The Agency and the Hill*, 181.

¹⁴⁸ Snider, *The Agency and the Hill*, 181.

¹⁴⁹ Zegart, "The Domestic Politics of Irrational Intelligence Oversight," 22. The HAC and SAC control appropriations for every aspect of the federal budget, therefore it should follow that other congressional committees could be similarly circumvented by the executive branch agencies they oversee. The other committees, however, have at their disposal an extremely important oversight tool that the intelligence committees are unable to utilize: public disclosure. (Zegart, 8) Therefore, budgetary control is even more important for the intelligence committees

intelligence committees.¹⁵⁰ This procedure, not formalized in any statute, is utilized to notify congressional leaders of intelligence activity other than covert action.¹⁵¹ The individuals notified are limited to the committee chairmen and ranking members.¹⁵² By accepting this practice early in the life of the Agency, congressional leaders once again set a damaging precedent. It is impossible for just a few extremely busy members of Congress to have the expertise required to process detailed and sensitive intelligence information.¹⁵³ Notification should be as widespread as possible without compromising national security. In many cases these leaders were unable to bring their staff “or even discuss” the information with each other after they left the briefing.¹⁵⁴ Without the use of their staff’s expertise, or the benefits of collaboration with their colleagues, members do not even know the correct questions to ask.¹⁵⁵

Additionally, by not raising immediate objections the individuals present in the briefing are now complicit in the executive branch’s actions.¹⁵⁶ Finally, based on past dialogue of leaders privy to these briefings, the intelligence officials do not always place the appropriate emphasis on important items.¹⁵⁷ Therefore, it is easy for a congressman with a multitude of competing interests to miss vital information. Congressional leaders should have, at the minimum, required the CIA to inform the whole SASC and HASC committees and their staffs.¹⁵⁸ Disclosure to the entire body of Congress may be

¹⁵⁰ U.S. Library of Congress, Congressional Research Service, “*Gang of Four*” *Congressional Intelligence Notifications*, by Alfred Cumming, CRS Report R40698 (Washington, DC: Office of Congressional Information and Publishing, March 18, 2011), 1.

¹⁵¹ Cumming, “*Gang of Four*” *Congressional Intelligence Notifications*, Summary.

¹⁵² Cumming, “*Gang of Four*” *Congressional Intelligence Notifications*, Summary.

¹⁵³ Cumming, “*Gang of Four*” *Congressional Intelligence Notifications*, 6.

¹⁵⁴ Cumming, “*Gang of Four*” *Congressional Intelligence Notifications*, 6.

¹⁵⁵ Zegart, “The Domestic Politics of Irrational Intelligence Oversight,” 11.

¹⁵⁶ Mark M. Lowenthal, *Intelligence: From Secrets to Policy* (Los Angeles: Sage, 2012), 231.

¹⁵⁷ Example is Pelosi says she wasn’t briefed when executive says she was see, Glenn Thrush, “Pelosi Briefed on Waterboarding in ‘02,” *Politico.com*, April 23, 2009, http://www.politico.com/blogs/glennthrush/0409/Pelosi_briefed_on_waterboarding_in_02_.html.

¹⁵⁸ Senate Select Committee on Intelligence, *Congressional Oversight of Intelligence Activities: Hearing before the Select Committee on Intelligence*, 110th Cong., 1st sess., November 13th, 2007.

impractical, however, limiting information to four individuals makes it difficult for those persons to take any action.¹⁵⁹ The “Gang of Four” has very little recourse to act on intelligence information they receive.

B. THROUGH THE END OF THE COLD WAR: 1976–1991

The first major piece of intelligence oversight legislation produced after the creation of the intelligence committees was the FY 1980 Intelligence Authorization Act. The law made significant changes to the covert action reporting requirements formalized in the Hughes-Ryan Amendment of 1974. Presidential findings now only had to be reported to the House and Senate intelligence committees versus the six committees previously mentioned.¹⁶⁰ Additionally, the other major provisions stated that the entire intelligence community, not just the CIA, must keep the HPSCI and SSCI informed in a “timely fashion.”¹⁶¹ The act did not define “timely fashion” nor did it specify that findings must be written.¹⁶² The provisions sought to rectify Congress’ lack of information in conducting strong oversight, however, it was too vague and again it did not give Congress any power to enforce.¹⁶³ It failed to prevent the Iran-Contra scandal, which began to unfold only a year later.

In 1981 the Reagan administration started providing aid to the rebel Contras in Nicaragua.¹⁶⁴ Congress disapproved of this policy and passed the Boland II Amendment, which forbade any such assistance.¹⁶⁵ In 1985, Lebanese terrorists hijacked an American flight to Beirut.¹⁶⁶ Simultaneously, the National Security Council (NSC) was brokering

¹⁵⁹ Senate Select Committee on Intelligence, *Congressional Oversight of Intelligence Activities: Hearing before the Select Committee on Intelligence*, 110th Cong., 1st sess., November 13th, 2007.

¹⁶⁰ Kennedy, *Of Knowledge and Power*, 183.

¹⁶¹ Kennedy, *Of Knowledge and Power*, 182.

¹⁶² Kennedy, *Of Knowledge and Power*, 182, 185.

¹⁶³ Kennedy, *Of Knowledge and Power*, 182–183.

¹⁶⁴ Paul Gumina, “Title VI of the Intelligence Authorization Act, Fiscal Year 1991: Effective Covert Action Reform or ‘Business as Usual’?,” 20 *Hastings Constitutional Law Quarterly* 149(1993): 168.

¹⁶⁵ Gumina, “Title VI of the Intelligence Authorization Act, Fiscal Year 1991,” 170.

¹⁶⁶ “Chronology of Events in the Iran-Contra Affair,” In CQ Almanac 1986, 42nd ed., 448–50. Washington, DC: Congressional Quarterly, 1987, <http://library.cqpress.com/cqalmanac/cqal86-1149226>.

an arms deal to improve relations with Iran.¹⁶⁷ Once President Reagan learned of the deal, he determined that selling arms to Iran may help negotiate the release of the hostages by the “pro-Iranian” terrorists.¹⁶⁸ This was, however, in direct violation of the U.S.’s “no negotiations for hostages” policy.¹⁶⁹ Additionally, the NSC violated the Boland II Amendment by using the proceeds from the arms sales to once again aid the Contras in Nicaragua.¹⁷⁰ The operation was exposed in 1986 after Nicaragua’s Sandinista government shot down a CIA re-supply plane and a Lebanese magazine exposed the arms-for-hostages dealings.¹⁷¹

On November 21, 1986, Congress began investigations into the Iran-Contra scandal and discovered numerous intelligence community abuses.¹⁷² Hughes-Ryan had introduced the requirement for a presidential finding but did not require it be written, resulting in several conflicting testimonies on what operations President Reagan knew about or ordered during Iran-Contra.¹⁷³ In one particular instance President Reagan claimed that he denied approving a specific arms sale, while National Security Advisor (NSA) Robert C. McFarlane testified the president did approve the exact same arms sale.¹⁷⁴ A CIA plane flew arms to Iran without the approval of Deputy CIA Director John McMahon or a presidential finding.¹⁷⁵ To repair the damage, CIA general counsel Stanley Sporkin drafted presidential findings that retroactively approved the flights.¹⁷⁶ Finally,

¹⁶⁷ “Chronology of Events in the Iran-Contra Affair.”

¹⁶⁸ “Chronology of Events in the Iran-Contra Affair.”

¹⁶⁹ William J. Daugherty, “Approval and Review of Covert Action Programs Since Reagan,” *International Journal of Intelligence and Counterintelligence*, 17:1 (2004): 62, <http://dx.doi.org/10.1080/088506004902525669>.

¹⁷⁰ Gumina, “Title VI of the Intelligence Authorization Act, Fiscal Year 1991,” 172.

¹⁷¹ Gumina “Title VI of the Intelligence Authorization Act, Fiscal Year 1991,” 174–175.

¹⁷² “Chronology of Events in the Iran-Contra Affair.”

¹⁷³ Radsan, “An Overt Turn on Covert Action,” 522; “Chronology of Events in the Iran-Contra Affair.”

¹⁷⁴ “Chronology of Events in the Iran-Contra Affair.”

¹⁷⁵ “Chronology of Events in the Iran-Contra Affair.”

¹⁷⁶ “Chronology of Events in the Iran-Contra Affair.”

numerous executive branch officials including Alan Fiers (CIA Chief of the Central America Task Force) and Elliott Abrams (Assistant Secretary of State) were caught lying under oath during the investigation.¹⁷⁷

The results of the investigation prompted the FY 1991 Intelligence Authorization Act.¹⁷⁸ A summary of the major changes regarding covert action are as follows: findings for authorizing covert actions must be in writing and in advance; Congress must be notified in advance; if advance notice is not possible, the president must notify Congress in a “timely fashion”; and covert actions may not violate the Constitution or other U.S. laws.¹⁷⁹ Finally, Congress included the first official definition of covert action in the act: “an activity or activities of the United States Government to influence political, economic, or military conditions abroad, where it is intended that the role of the United States Government will not be apparent or acknowledged publicly.”¹⁸⁰ Conference language accompanying the initial bill stated that “timely fashion” was intended to mean “within a few days.”¹⁸¹

President George H.W. Bush vetoed this version and Congress passed a newer version with different conference language that removed the “within a few days” intent.¹⁸² Although this statute strengthened intelligence community reporting requirements, it still did not provide Congress with sufficient access to information. The president still has the authority to determine what constitutes a “timely fashion” and ultimately withhold information if he deems necessary. President Bush issued the following signing statement in conjunction with the FY 1991 Intelligence Authorization Act that affirmed the above executive prerogatives:

¹⁷⁷ Gumina “Title VI of the Intelligence Authorization Act, Fiscal Year 1991,” 175.

¹⁷⁸ Daugherty, “Approval and Review of Covert Action Programs Since Reagan,” 66.

¹⁷⁹ U.S. Library of Congress, Congressional Research Service. *Covert Action: Legislative Background and Possible Policy Questions*, by Alfred Cumming, CRS Report RL33715 (Washington, DC: Office of Congressional Information and Publishing, February 9, 2009) 2, 5–6.

¹⁸⁰ Cumming, *Covert Action: Legislative Background and Possible Policy Questions*, 6.

¹⁸¹ Cumming, *Covert Action: Legislative Background and Possible Policy Questions*, 2.

¹⁸² Cumming, *Covert Action: Legislative Background and Possible Policy Questions*, 2.

Several provisions in the Act requiring the disclosure of certain information to the Congress raise Constitutional concerns. These provisions cannot be construed to detract from the President's constitutional authority to withhold information the disclosure of which could significantly impair foreign relations, the national security, the deliberative processes of the executive, or the performance of constitutional duties.¹⁸³

Despite Bush's claim that the Act may be infringing on the constitutional authority of the executive, many of the statutory reporting requirements regarding covert action intelligence activity are in place because the executive branch violated U.S. laws and the Constitution. In fact, the executive branch violated the Constitution and U.S. laws so many times that Congress actually felt compelled to pass a law saying they cannot violate the Constitution (FY 1991 Intelligence Authorization Act). Most historical examples of intelligence community abuses demonstrate that the executive branch sought to conceal intelligence activity that was of questionable legal or moral nature. The leadership most likely deemed the activity absolutely necessary, but felt that Congress may disapprove of these actions.¹⁸⁴ Therefore, the executive branch withheld, or selectively conveyed, information to avoid scrutiny of the policy decisions.¹⁸⁵

Despite all the reforms implemented in the wake of the Iran-Contra scandal, Congress still lacked the ability to force disclosure of intelligence activity. Funding procedures did not change and the statutory language remained vague. Congress was correct in its first version of the bill to mandate notification "within a few days." By removing this conference language the executive branch kept the ability to define "timely fashion." Congress should have overridden the veto and mandated specific reporting requirements. With a more precise requirement it would be clear when the president violated the statute. "Within a few days" is still a vague time frame; however, it is much more specific than a "timely fashion."

¹⁸³ George Bush: "Statement on Signing the Intelligence Authorization Act, Fiscal Year 1991," August 14, 1991. Online by Gerhard Peters and John T. Woolley, The American Presidency Project, <http://www.presidency.ucsb.edu/ws/?pid=19899>.

¹⁸⁴ Kennedy, *Of Knowledge and Power*, 201.

¹⁸⁵ Kennedy, *Of Knowledge and Power*, 201.

The single strong reform that resulted from the Iran-Contra scandal was the implementation of a statutory Inspector General.¹⁸⁶ The CIA has had an IG since 1952, though the position was appointed by the Director.¹⁸⁷ The CIA Inspector General Act of 1989 created an IG who would be “appointed by the president and confirmed by the Senate, and who could only be removed by the president. The IG would report to, and be under the “general supervision” of, the DCI but would have authority to carry out investigations, audits, and inspections of his or her choosing.”¹⁸⁸ Congress finally implemented at least one change that may give it access to unbiased and complete information.

C. PRESENT ISSUES: 1991–2012

With the exceptions of the Aldrich Ames case and the National Reconnaissance Office budget fiasco, most of the 1990s remained free from intelligence scandals.¹⁸⁹ After the 9/11 tragedy, however, intelligence activity once again increased which in turn resulted in more controversy. Enhanced interrogations and warrant-less electronic surveillance are two of the predominant issues. In both these cases, unlike many instances in the past, the executive branch did notify Congress prior to the stories leaking to the press.¹⁹⁰ Congress’ inability to effect policy is highlighted in both cases. The procedures and statutes they have in place are simply not strong enough to effect any change in policy. In 2002, Congressional leaders were notified of enhanced interrogation techniques through confidential “Gang of Four”-style briefings and were sworn to secrecy.¹⁹¹ They

¹⁸⁶ Snider, *The Agency and the Hill*, 147.

¹⁸⁷ Snider, *The Agency and the Hill*, 147.

¹⁸⁸ Snider, *The Agency and the Hill*, 149.

¹⁸⁹ Zegart, *Flawed by Design*, 201–202; From Zegart *Flawed by Design*, 202 – National Reconnaissance Office lost track of \$1Billion, didn’t know it was missing until discovered by an internal audit

¹⁹⁰ James Risen and Eric Lichtblau, “Bush Lets U.S. Spy on Callers without Courts,” *The New York Times*, Dec. 16th, 2005, <http://select.nytimes.com/gst/abstract.html?res=F00F1FFF3D540C758DDAB0994DD404482>; Glenn Thrush, “Pelosi Briefed on Waterboarding in ‘02,” *Politico.com*, April 23, 2009, http://www.politico.com/blogs/glennthrush/0409/Pelosi_briefed_on_waterboarding_in_02_.html

¹⁹¹ Thrush, “Pelosi Briefed on Waterboarding in ‘02”; Cumming, *Gang of Four*” *Congressional Intelligence Notifications*.

were not able to consult their expert staff or other members of the Intelligence Committees.¹⁹² The only member who was on record raising an objection with the CIA was Representative Jane Harmon (D-California).¹⁹³

Members of Congress were also aware of the administration's warrant-less wiretapping activities prior to the story becoming public.¹⁹⁴ In 2003, chairman of the SSCI, Senator Rockefeller (D-West Virginia) expressed concerns about the program in a written letter to Vice President Cheney, however, the administration continued monitoring electronic surveillance without a warrant.¹⁹⁵ The Bush Administration's warrant-less wiretapping was first publicized in *The New York Times* in December 2005.¹⁹⁶ In 2007, after considerable public debate, the Bush Administration began conducting surveillance in accordance with FISA.¹⁹⁷ In both cases Congress alone was not powerful enough to invoke change in policy. Changes only occurred after the cases became public.

The *9/11 Commission Report* labeled congressional oversight of intelligence “dysfunctional.”¹⁹⁸ Among its recommendations were to create a joint committee and combine authorizations and appropriations authority.¹⁹⁹ Congress has not implemented either of these recommendations. There are numerous advantages and disadvantages to the joint committee model.²⁰⁰ Discussing all the pros and cons is outside the scope of this

¹⁹² Thrush, “Pelosi Briefed on Waterboarding in ‘02”

¹⁹³ Thrush, “Pelosi Briefed on Waterboarding in ‘02”

¹⁹⁴ Risen and Lichtblau, “Bush Lets U.S. Spy on Callers without Courts.”

¹⁹⁵ Risen and Lichtblau, “Bush Lets U.S. Spy on Callers without Courts.”

¹⁹⁶ Eric Rosenbach and Aki J. Peritz, *Confrontation or Collaboration? Congress and the Intelligence Community* (Boston: Harvard, Belfer Center, 2009), 69, <http://belfercenter.ksg.harvard.edu/files/IC-book-finalasof12JUNE.pdf>.

¹⁹⁷ Rosenbach and Peritz, *Confrontation or Collaboration? Congress and the Intelligence Community*, 70.

¹⁹⁸ *The 9/11 Commission Report*, 420.

¹⁹⁹ *The 9/11 Commission Report*, 420.

²⁰⁰ Halchin, *Congressional Oversight of Intelligence*, 9–14.

thesis. However, the Joint Committee on Atomic Energy was often cited as being extremely powerful and thus a similar model may assist Congress in achieving stronger intelligence oversight.²⁰¹

Congress has taken some minor steps to synchronize authorizations and appropriations. In 2007, the Senate issued a Memorandum of Agreement between the Intelligence and Appropriations Committees that sought to improve coordination between the two bodies.²⁰² These measures include:

- Notify staff and allow them to attend the intelligence hearings of the other body.
- Allow each Intelligence Committee member who is also an appropriator to bring his or her intelligence staff members to Appropriations Committee hearings and markups.
- Permit all senators and cleared staff of one committee to review the bill, report, and classified annex of the other before action is taken.
- (Give) the chairmen and ranking minority members of each committee the opportunity to appear before the other panel to present their views prior to the markup of either the intelligence authorization or appropriations bills.²⁰³

Additionally, as of 2011, the House has three appropriators that sit on the Intelligence Committee.²⁰⁴ Both of these options fall well short of combining authorizations and appropriations. Intelligence agencies are still able to maneuver around the intelligence committees and get funding direct from the Appropriations Committees.²⁰⁵

²⁰¹ Halchin, *Congressional Oversight of Intelligence*, 6.

²⁰² Halchin, *Congressional Oversight of Intelligence*, 18.

²⁰³ Halchin, *Congressional Oversight of Intelligence*, 18.

²⁰⁴ Halchin, *Congressional Oversight of Intelligence*, 20.

²⁰⁵ Zegart, "The Domestic Politics of Irrational Intelligence Oversight," 22.

D. CONCLUSION

The causal factors identified in Congress' failure to oversee intelligence are as follows:

1. Setting a damaging precedent of weak oversight in the early years of the CIA
2. Lack of formal oversight structure for first two decades
3. Legislation
 - a. Vague
 - b. Empowers executive branch vice legislative branch
 - c. Reduces checks and balances intended by Founding Fathers
4. Power of the purse diminished
 - a. CIA not required to account for expenditures
 - b. Authorization process circumvented
5. Surrendering, or failing to utilize, other legislative oversight methods

The history of intelligence abuses in the United States clearly demonstrates that without checks and balances, government agencies will abuse their power. Therefore, any statutes that Congress passes should reinforce and not diminish its constitutional powers. Congress must make its legislation specific so violations are easy to detect. Congressional oversight of intelligence has made progress over the past 65 years. Unfortunately, the practices, procedures, and statutes enacted during the formative years of the CIA harmed Congress' ability to provide adequate oversight. Representatives and senators must ensure that every federal agency is subject to the same checks and balances. An agency like the CIA is absolutely necessary for national security and has made tremendous contributions to the freedom of the United States. Constitutional principles and values, however, should not be sacrificed in the process.

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IV. CONGRESSIONAL OVERSIGHT OF DEFENSE

In contrast to the poor oversight of the CIA, Congress has been largely successful in overseeing the Department of Defense. Compared to intelligence there have been very few major scandals and defense shortcomings. Experts and scholars may still point to flaws or inefficiencies in the defense oversight process. Of these limited issues, however, none compare in severity or scope to the multiple intelligence abuses discussed in the previous chapter. Senators and representatives take an active role in shaping the armed forces and defense policy. The question of whether Congress influenced defense policy in the right or wrong direction has an inherently subjective answer.²⁰⁶ Once policy is set in a certain direction, it is impossible to know whether an alternative course of action would have yielded acceptable or better results. The primary goal of this chapter is not to evaluate Congress' policies but to demonstrate that through its oversight tools it has made an impact on national defense. In some of the following examples, however, this thesis highlights the positive influences Congress has made on defense policy. In any case, using the oversight of the CIA as a reference, active congressional involvement yields better results than lack of oversight.

A. NATIONAL SECURITY ACT OF 1947–VIETNAM WAR: STRENGTHENING THE POWER OF THE PURSE

Congress had an immediate advantage in oversight of defense that they did not have in intelligence: a formal oversight structure. The Legislative Reorganization Act of 1946 established the modern Armed Services Committees that are present in both the House and Senate today.²⁰⁷ These committees, however, were not an innovation of the 1946 reorganization of Congress. Prior to 1946, the House and Senate had a Military Affairs Committee and a Naval Affairs Committee.²⁰⁸ Overseeing the operations of the

²⁰⁶ Arnold Kanter, "Congress and the Defense Budget: 1960–1970" *The American Political Science Review*, 66, no. 1 (1972): 138.

²⁰⁷ *Legislative Reorganization Act of 1946*, Pub. L. No. 29–401, 79th Cong., 2nd Sess. (August 2, 1946).

²⁰⁸ Special Committee on the Organization of Congress Conference Report to accompany the *Legislative Reorganization Act of 1946*, Pub. L. No. 29–401, 79th Cong., 2nd Sess. (March 5, 1946), 3.

military establishment was not a new endeavor for Congress. What was new, however, was the emphasis placed on systematic oversight of the executive branch. The Special Committee on the Organization of Congress' report that accompanied Senate Resolution 2177 (what became the Legislative Reorganization Act) stated the following:

A third group of provisions in the bill is designed to strengthen congressional surveillance of the execution of the laws by the executive branch...We often delegate the rule-making power to administrative departments and commissions, without making any provision for follow-up to see if administrative rules and regulations are in accord with the intent of the law...To remedy this situation, S. 2177 would authorize the standing committees of both Houses to exercise continuous surveillance of the execution of the laws by the administrative agencies within their jurisdiction.²⁰⁹

Congressional committees now had the legally- mandated responsibility and authority to oversee agencies within the executive branch. Additionally, they had “subpoena power” to call witnesses forward during hearings.²¹⁰ The statutory authority of the Armed Services Committees set an early precedent for strong oversight of DoD. In contrast, oversight of the CIA was relegated to subcommittees of the HASC/SASC whose authorities were much “less formal.”²¹¹

Following World War II, President Truman was intent on reducing the large federal deficit. Part of the deficit reduction plan involved capping defense spending at \$15 billion per year, which would significantly reduce World War II force levels.²¹² In the early days of DoD, unlike their tentativeness regarding intelligence matters, members of Congress were not hesitant to question this military spending decision or other defense policies. Members were not tentative about asserting the legislative branch's constitutional authorities over the armed services. During FY 1947 budget deliberations,

²⁰⁹ Special Committee on the Organization of Congress Conference Report to accompany the *Legislative Reorganization Act of 1946*, Pub. L. No. 29-401, 79th Cong., 2nd Sess. (March 5, 1946), 6.

²¹⁰ Special Committee on the Organization of Congress Conference Report to accompany the *Legislative Reorganization Act of 1946*, Pub. L. No. 29-401, 79th Cong., 2nd Sess. (March 5, 1946), 6.

²¹¹ Legislative Oversight of Intelligence, Central Intelligence Agency, accessed Oct. 14 2012, <https://www.cia.gov/library/publications/additional-publications/the-work-of-a-nation/intelligence-oversight/legislative-oversight-of-intelligence.html>.

²¹² Edward A. Kolodziej, *The Uncommon Defense and Congress, 1945-1963* (Columbus: Ohio State University Press, 1966), 38.

Representative Carl Vinson (D-Georgia) stated in opposition to the Truman Administration's plan to cut back the U.S. Navy: "It is up to the American Congress to say what shall constitute the United States Navy."²¹³

Although war in Korea made it impossible to maintain this \$15 billion cap, the executive branch still sought to emphasize fiscal restraint. In the face of a growing Soviet threat and communist expansion many legislators openly questioned the wisdom of these reductions. After President Eisenhower took office congressional critics were equally critical of his "New Look" defense strategy, which favored technology over manpower.²¹⁴ For example, the Chairman of the Subcommittee on the Air Force blamed Eisenhower's policies for the waning power of the U.S. Air Force compared to that of the Soviet Union's.²¹⁵ Much of the 1940s and 1950s were marked by a legislative-executive rivalry centered on the budget and force allocation. The executive branch sought to reduce defense spending, exercise fiscal responsibility, and rely more on technology and less on conventional forces. Congress, on the other hand, looked to increase force levels, modernize equipment, and expand research and development. Many early budget confrontations ended with executive victories, but events in the mid to late 1950s prompted Congress to introduce legislation that enhanced its authority.²¹⁶

In 1956, the SASC identified what they viewed as a duplication of efforts between the Army and the Air Force. The Army had sought to fund a Nike missile system to provide defense of certain areas within the continental United States. Concurrently, the Air Force looked to fund Talos, which was also a point defense missile system. In reviewing these requests, the SASC inquired why both the systems were necessary. It appeared as if the systems provided overlapping coverage, wasting precious defense funds that could be better allocated to other programs. Both the Army and the Air Force defended their systems, and neither service could provide an adequate answer to

²¹³ Kolodziej, *The Uncommon Defense and Congress*, 52.

²¹⁴ Kolodziej, *The Uncommon Defense and Congress*, 180–202.

²¹⁵ The Center for Legislative Archives, National Archives, accessed on November 15, 2012, <http://www.archives.gov/legislative/finding-aids/reference/senate/armed-services/1955–1968.html>.

²¹⁶ The preceding paragraph is a summary of events discussed in Kolodziej, *The Uncommon Defense and Congress*, approximately between pages 34– 202.

Congress. As a result, the Senate deleted the provision for the Talos system in its version of the military construction authorization bill. The House allowed the Talos system on the condition that the Secretary of Defense provides an answer to Congress as to why both systems were necessary. The president received and vetoed the House version of the bill. In retaliation, Congress pulled the funding for Talos and overrode the president's veto.²¹⁷

The "Nike-Talos dispute" was only one of several disagreements between services Congress mediated in the late 1950s.²¹⁸ As Thomas McNaugher wrote in his article, "Weapons Procurement: The Futility of Reform," "The Eisenhower era remains widely known for the furious interservice competition it spawned by holding a lid on defense spending while focusing the nation's procurement effort on nuclear weapons and delivery vehicles."²¹⁹ These disagreements paved the way for Armed Services Committees to get more involved in oversight of defense.²²⁰ The legislative branch did not defer to the executive like it had done in intelligence oversight. Instead, lawmakers maintained their power of the purse through strong accounting procedures and sought to eliminate waste while improving defense. They ensured funds were spent appropriately and efficiently. Congress strengthened rather than diminished its voice in defense matters.

The first action Congress took to formalize its stronghold on the power of the purse was passing the Russell Amendment to the Military Construction Authorization Act for FY1960. The act stated:

No funds may be appropriated after December 31, 1960, to or for the use of any armed force of the United States for the procurement of aircraft,

²¹⁷ The preceding paragraph is a summary of events described in Raymond H. Dawson, "Congressional Innovation and Intervention in Defense Policy: Legislative Authorization of Weapons Systems," *The American Political Science Review*, 56, no. 1 (1962): 48–49.

²¹⁸ Dawson, "Congressional Innovation and Intervention in Defense Policy: Legislative Authorization of Weapons Systems," 48–52.

²¹⁹ Thomas L. McNaugher, "Weapons Procurement: The Futility of Reform," *International Security*, 12, no.2 (1987): 76.

²²⁰ Pat Towell, "Congress and Defense," in *Congress and the Politics of National Security*, ed. David P. Auerwald and Colton C. Campbell (Cambridge: Cambridge University Press, 2012), 77.

missiles, or naval vessels unless the appropriation of such funds has been authorized by legislation enacted after such date.²²¹

This bill was the foundation of the extensive defense authorization process that exists today.²²² Although this bill on the surface appears as a purely budgetary measure it has strong implications for policy as well. Funding dictates the types of equipment, force levels, and research and development agendas for the armed services. The composition of the military effects the development of war plans and foreign policy. By shaping the structure of the military the legislative branch is in effect driving which military objectives the executive branch can and cannot pursue.

The Russell Amendment was instrumental in establishing systematic and rigorous oversight through annual budget review. This is the type of oversight that McCubbins and Schwartz would deem “police patrol” oversight.²²³ Every year the Department of Defense must justify its expenses by providing Congress ample information to oversee the executive branch. Additionally, most of the defense budget is accessible to the entire legislative branch. Some critics assert that the process has led to Congressional “micro-management” of defense.²²⁴ For example, one critic wrote, “Members and staff seem anxious to control every detail: the fit of fatigues, the price of hammers, the brand of tools, even the allocation of overhead costs to the price of spare parts.”²²⁵ However, a comparison between oversight of defense and intelligence demonstrates that the power of the purse is critical in conducting systematic oversight. Money gives Congress systematic leverage to obtain information.²²⁶ Once they relinquish that power it has forfeited its ability to conduct police patrol oversight.

²²¹ Dawson, “Congressional Innovation and Intervention in Defense Policy: Legislative Authorization of Weapons Systems,” 42.

²²² Towell, “Congress and Defense,” 77–78.

²²³ McCubbins and Schwartz, “Congressional Oversight Overlooked: Police Patrols and Fire Alarms,” 166.

²²⁴ Theodore J. Crackel, “Pentagon Management Problems: Congress Shares the Blame,” *Heritage Foundation Reports*, No. 405 (1985): 1.

²²⁵ Crackel, “Pentagon Management Problems: Congress Shares the Blame,” 1.

²²⁶ Zegart, “The Domestic Politics of Irrational Intelligence Oversight,” 20.

The missile debates of the 1950s, and the passing of the Russell Amendment, also support Diana Evans' assertion that electoral considerations are not always primary motivator for members of Congress.²²⁷ Changes like cancelling the Talos missile program and the Russell Amendment were instituted to control government spending. This in turn meant lower expenditures in various areas throughout the country and that undoubtedly meant some members of Congress' constituents and supporters lost money, which is often bad news for re-election goals. Therefore, it is logical that the missile defense argument was settled in an effort to positively affect the greater public welfare. Correspondingly, critics often claim that lack of electoral payoff is a major contributor to poor intelligence oversight.²²⁸ Although this argument carries some merit, it does not fully explain ineffective oversight of the CIA. As demonstrated by defense oversight, legislators do not always require electoral payoff to engage in effective oversight. They do, however, require the formal processes and the authority to implement these procedures. Defense oversight has these processes and also provides congressman electoral benefits. Intelligence oversight does not carry as pronounced electoral benefits therefore the formal procedures are even more important.

B. VIETNAM WAR-GOLDWATER-NICHOLS: STRENGTHENING THE OVERSIGHT OF OPERATIONS

To be sure, not all congressional oversight of defense has been successful. The Vietnam War represents a large failure on the part of Congress. The legislative branch failed because they strayed from the tenets of strong oversight they normally exercise in defense oversight. The undeclared war was unpopular with the American public and Congress failed to react in a timely manner. It took eight years for Congress to invoke its power of the purse to express its constituents' disapproval of the executive branch's actions. In 1972, the Senate finally voted, 49–47, to pull funding for operations in Southeast Asia.²²⁹ The House, on the other hand, was never able to get a positive vote to

²²⁷ Evans, "Congressional Oversight and the Diversity of Member's Goals."

²²⁸ Zegart, "The Domestic Politics of Irrational Intelligence Oversight," 2.

²²⁹ Les Aspin, "Why Doesn't Congress Do Something," *Foreign Policy*, no. 15 (1974), 70.

end the war.²³⁰ The executive branch had effectively circumvented Congress' constitutional authority to declare war. To prevent similar occurrences in the future Congress passed the War Powers Resolution in 1973.

The major requirements of the War Powers Resolution are:

- Inform Congress before committing troops into hostilities.
- Within 48 hours submit a report to Congress detailing the involvement.
- Withdraw troops after 60 days unless Congress specifically authorizes the operations to continue.²³¹

The War Powers Resolution is an example of poor fire alarm oversight and a marked departure from Congress' norm. The clauses in the War Powers Resolution are strangely similar to the covert action reporting requirements outlined in the previous chapter and have had little effect on executive branch operations over the past 39 years.²³² Congress placed all responsibility for action on the president to inform the legislative branch and then take the initiative to withdraw troops without further authorization. Additionally, Congress has very little recourse if the president fails to follow the War Powers Resolution. Congress should have constructed the Act to be proactive police patrol legislation rather than reactive fire alarm legislation. Authorization should be required in advance for troop deployments above a predetermined level.²³³ Congress' greatest successes in overseeing the defense establishment have come influencing future decisions rather than attempting to overturn past decisions.

C. GOLDWATER-NICHOLS-PRESENT: MAINTAINING RIGOROUS OVERSIGHT

Congress returned to its tradition of strong DoD oversight through the implementation of The Goldwater Nichols Act. The Iran hostage rescue attempt and other

²³⁰ Aspin, "Why Doesn't Congress Do Something," 70.

²³¹ Barry M. Blechman, *The Politics of National Security: Congress and U.S. Defense Policy* (New York: Oxford University Press, 1990) 1–2.

²³² The impacts of the War Powers Resolution are summarized in Blechman, *The Politics of National Security: Congress and U.S. Defense Policy*, 167–200.

²³³ The arguments in this paragraph are based on similar arguments made by Blechman in *The Politics of National Security: Congress and U.S. Defense Policy*, 167–200.

small military operations such as Grenada exposed the armed services weakness in joint operations. Following these failures, the White House neglected to correct the incompatibility between services prompting Congress to take action.²³⁴ In 1986, Congress passed the Goldwater-Nichols Act, which emphasized joint operations in the military. Incentives to joint assignments were introduced and the status of the joint staff was elevated. Officers had to complete a joint assignment for promotion to the rank of flag officer.²³⁵ Additionally, like many other successful legislative defense oversight initiatives, Goldwater-Nichols utilized proactive and effective oversight tools such as the authorizations and confirmation processes. The major changes include:

- The Chairman of the Joint Chiefs of Staff (JCS) became the principal military advisor to the president.
- Chairman of the JCS, and the newly created Vice Chairman position are both appointed by president and confirmed by Senate.
- The Chairman of the JCS outranks all other officers, however, he does not exercise military command over them.
- Joint Duty is required for promotion to flag officer.²³⁶

The size and composition of the Joint Staff is authorized by Congress, which inherently allows the legislative branch a certain measure of control. Additionally, Congress very skillfully incorporated its confirmation powers into Goldwater-Nichols.²³⁷ Because the Senate confirms both the JCS and his Vice Chairman, the president must appoint someone who will pass the confirmation process.²³⁸ Congress has now constrained the president's choice to someone who is sympathetic to the legislative branch's concerns.²³⁹ Furthermore, all flag officers must be approved by legislative branch. Accordingly,

²³⁴ Vincent Davis, "Reorganization and National Security," *Annals of the American Academy of Political and Social Science*, 517 (1991): 172.

²³⁵ *Goldwater Nichols Department of Defense Reorganization Act of 1986*, Pub. L. No. 99-433, 99th Cong., 1st Sess., Sec 404.

²³⁶ Drawn from various sections of Goldwater Nichols Department of Defense Reorganization Act of 1986.

²³⁷ Aspin, "Why Doesn't Congress Do Something," 79.

²³⁸ Aspin, "Why Doesn't Congress Do Something," 79.

²³⁹ Aspin, "Why Doesn't Congress Do Something," 79.

Congress mandated that every flag officer candidate must have a joint tour. Since Congress controls the confirmation process they can ensure this procedure is followed. Previously, services kept their best officers and sent their mediocre performers to joint assignments.²⁴⁰ After Goldwater-Nichols, services had to send their best officers to joint assignments to make them eligible for promotion to flag ranks.²⁴¹

The Goldwater-Nichols example also demonstrates that Congress takes its oversight responsibilities seriously despite a lack of traditional incentives. As Vincent Davis wrote in “Reorganization and National Security,” “Goldwater-Nichols was unique in many other respects. For one thing, it was the only major defense reorganization that did not receive significant media coverage and that even as of late 1990 had received virtually no attention from the academic community of defense specialists.”²⁴² The lack of media coverage indicates that legislators received minimal electoral payoff from reforming the armed services. Once again, this supports Evans’ assertion that electoral considerations are not always members’ of Congress primary motivations. Given the proper process and authority, legislators will effect changes to benefit the welfare of the country without seeking personal reward. Additionally, as James R. Locher writes in *Victory on the Potomac*, “There was never a hint of executive-legislative competition, partisan politics, or concern about who got the credit.”²⁴³ Congressman will cut across party lines and put aside electoral considerations to effect enduring change.

Congress continues to weigh in on a multitude of issues affecting the Department of Defense. The F-22 debate is one such high-profile issue that Congress and the executive branch have dealt with over the past few years. In 2009, President Obama and Secretary of Defense Robert Gates requested from Congress that F-22 production be

²⁴⁰ Davis, “Reorganization and National Security,” 164–165.

²⁴¹ Davis, “Reorganization and National Security,” 165.

²⁴² Davis, “Reorganization and National Security,” 158.

²⁴³ James R. Locher III., *Victory on the Potomac: The Goldwater-Nichols Act Unifies the Pentagon* (College Station: Texas A&M, 2002), 392.

halted at 187 planes rather than the 381 originally requested.²⁴⁴ The initial reaction from the legislative branch was highly unfavorable. Many representatives and senators immediately complained about the numerous jobs that would be lost from discontinuing production of the Raptor, and one report noted, “200 members of the House and 44 members of the Senate have signed letters to President Obama urging him to extend the \$62 billion F-22 Raptor program.”²⁴⁵ Additionally, many supporters from local governments around the country wrote the federal government to keep the program.²⁴⁶ In the end, however, Congress voted to halt the program. Based on budget constraints, keeping the F-22 meant many other valuable programs would have to be cut.²⁴⁷ Additionally, the Raptor fills a niche capability unmatched by any other country in the world. In the future it may be wise to reopen the line, however, Congress made the correct decision based on present circumstances.

Congress once again made a decision that was vitally important to national security without making personal gain its sole concern. Undoubtedly there were individuals within Congress who were concerned with how the cancellation of the F-22 program would serve their electoral interests. Additionally, there were likely members of Congress who genuinely believed that cancelling the Raptor program was not in the best interests of the country. However, Congress was able to collectively come to the correct decision. Finally, this decision was particularly notable because, like Goldwater-Nichols, it was bipartisan in nature. President Obama and his 2008 presidential opponent, Senator

²⁴⁴ U.S. Library of Congress, Congressional Research Service, *Air Force F-22 Fighter Program Background and Issues for Congress: Background and Issues for Congress*, by Ronald O’Rourke, CRS Report RL31673 (Washington, DC: Office of Congressional Information and Publishing, September 11, 2009), 24; Lee Ferran, “Final F-22 Fighter Delivered, McCain Says \$79B Jets Still Have No Mission” ABC The Blotter, May 3, 2012, <http://abcnews.go.com/Blotter/final-22-fighter-delivered-sen-john-mccain-79b/story?id=16270127>.

²⁴⁵ Ryan Powers, “Congress Pressures Obama To Extend Unnecessary F-22 Program, Claims It’s ‘Too Big To Fail’,” *Think Progress Security*, Jan 21, 2009, <http://thinkprogress.org/security/2009/01/21/35052/congress-f22-fail/?mobile=nc>.

²⁴⁶ Ferran, “Final F-22 Fighter Delivered, McCain Says \$79B Jets Still Have No Mission.”

²⁴⁷ O’Rourke, *Air Force F-22 Fighter Program Background and Issues for Congress: Background and Issues for Congress*, 24.

John McCain (R-Arizona), both advocated cutting the program.²⁴⁸ The legislative branch is capable of cutting across party lines and making the right decision when it comes to matters of national security.

D. CONCLUSION

There are numerous other examples of strong congressional oversight of the Department of Defense not included in this chapter. Congress has a history of assertive oversight that has had pronounced influence on the United States' national security policies. A formal structure to oversee DoD was in place at the inception of the department. Senators and representatives immediately set a precedent of significant congressional involvement in defense matters. Both the DoD and the president came to expect congressional participation. Additionally, lawmakers passed legislation such as the Russell Amendment that enhanced rather than diminished their power of the purse. Congress' monetary power over defense gave them the leverage to get information and make decisions. Furthermore, with few exceptions the legislative branch predominantly implemented police patrol rather than fire-alarm oversight. Its systematic oversight of defense prevented the major scandals that have plagued intelligence for the last 65 years. Finally, defense oversight is principally criticized for being too overbearing and plagued with "pork-barrel" motivations. The examples in this chapter show that these accusations are misleading. There have been several examples where Congress has overcome the provincial motivations of individual members of Congress to promote greater national security.

The critiques of congressional oversight of the DoD and DHS are strikingly similar. In 1985, one Pentagon official stated "that over 90 percent of his staff must focus on less than 10 percent of his concerns just to respond to congressional inquiries or

²⁴⁸ Ferran, "Final F-22 Fighter Delivered, McCain Says \$79B Jets Still Have No Mission."

action.”²⁴⁹ In 1982, Secretary of Defense Caspar Weinberger made 16 appearances before Congress.²⁵⁰ The following year he made 20 appearances.²⁵¹ In 2011, current Secretary of DHS Janet Napolitano made just 11 appearances.²⁵² Finally, in 1983, defense witnesses testified before 96 different congressional committees.²⁵³ Therefore, it appears that DHS’s perceived problems are neither new nor isolated to homeland security.

Critics assert that this level of scrutiny equates to micromanagement on the part of Congress. The alternative is implementing procedures similar to those used in oversight of the CIA. Congress could alter its procedures to provide DoD broad financial authorizations, request minimal financial reporting, remove the Inspector General and cancel GAO audits. Additionally, the legislative branch could passively allow the executive branch to withhold information and only report to selected individuals on DoD’s terms. The result would be oversight analogous to that of the pre-9/11 intelligence community. The history of executive abuse of power implemented through the CIA attests that more oversight is better. The line between effective oversight and micromanagement can be thin, but evidence confirms that erring on the side of micromanagement is the lesser of two evils.

²⁴⁹ Crackel, “Pentagon Management Problems: Congress Shares the Blame,” 1.

²⁵⁰ Crackel, “Pentagon Management Problems: Congress Shares the Blame,” 2.

²⁵¹ Crackel, “Pentagon Management Problems: Congress Shares the Blame,” 2.

²⁵² Figure as calculated by author using how many times Secretary Napolitano’s name in appeared in the title of hearings located at http://www.dhs.gov/news-releases/testimony?field_news_type_tid=440 .

²⁵³ Crackel, “Pentagon Management Problems: Congress Shares the Blame,” 2.

V. FINAL COMPARISONS AND CONCLUSION

This chapter uses the data from the previous three chapters to compare and contrast congressional oversight of DHS, the CIA, and DoD. The legislative branch has historically been unsuccessful in preventing several major intelligence abuses over the past sixty-five years. Congress has, however, demonstrated strong oversight of DoD during the same time frame. This thesis demonstrates that congressional oversight of homeland security more closely resembles defense oversight rather than intelligence oversight.

Measuring success is somewhat difficult for homeland security. DHS has a broad mission ranging from border patrol to disaster response. Additionally, when evaluating disaster response to events such as Hurricane Katrina it is impossible to be fast enough or effective enough. There is never an acceptable amount of loss of life or property. Using the efficacy of counterterrorism efforts is one useful way to objectively evaluate DHS's performance over the last ten years. Despite DHS's broad mission, it was originally established with a primary mission of defending America.²⁵⁴ Before 9/11, from 1991 to 2000, the United States averaged more than 41 terrorist attacks per year.²⁵⁵ In the time period 2002–2008, the number of terrorist attacks dropped to 16 per year.²⁵⁶ Additionally, during the same time periods terror related deaths dropped from 217 to just 25, 13 of which are attributed to the Fort Hood shootings.²⁵⁷ Some of the success in deterring terrorism is obviously attributable to the heightened awareness following 9/11 and the efforts of other federal agencies. Nonetheless, it would be unfair for critics to discount the efforts of DHS. Therefore, at the very least, Congress' robust oversight of homeland security has not impeded DHS in accomplishing its mission.

²⁵⁴ Martin Kady II, "Provisions of Homeland Security Creation," *CQ Weekly* (February 15, 2003): 417–20, <http://library.cqpress.com/cqweekly/weeklyreport108-000000601089>.

²⁵⁵ Erin Miller and Kathleen Smarick, "Background Report: 9/11, Ten Years Later," *The National Consortium for the Study of Terrorism and Responses to Terrorism*, http://www.start.umd.edu/start/announcements/BackgroundReport_10YearsSince9_11.pdf.

²⁵⁶ Erin Miller and Kathleen Smarick, "Background Report: 9/11, Ten Years Later."

²⁵⁷ Erin Miller and Kathleen Smarick, "Background Report: 9/11, Ten Years Later."

A. SYSTEMATIC VERSUS REACTIONARY OVERSIGHT

Congress plays an extremely important role in the success or failure of executive agencies. Regardless of whether the legislative branch is overseeing DoD, DHS or the CIA it is generally attempting to accomplish the following objectives:

- Improve the efficiency, economy, and effectiveness of governmental operations.
- Evaluate programs and performance.
- Detect and prevent poor administration, waste, abuse, arbitrary and capricious behavior, or illegal and unconstitutional conduct.
- Protect civil liberties and constitutional rights.
- Inform the general public and ensure that executive policies reflect the public interest.
- Gather information to develop new legislative proposals or to amend existing statutes.
- Ensure administrative compliance with legislative intent.
- Prevent executive encroachment on legislative authority and prerogatives.²⁵⁸

Every one of these objectives is better accomplished through rigorous and systematic police patrol oversight rather than reactionary fire-alarm oversight. It is impossible to “evaluate programs,” ensure compliance, or “detect and prevent poor administration” through passive oversight. Prevention, protection, and improvement all imply a proactive approach to oversight. Proactivity, in turn, requires the legislative branch to obtain information from the executive branch. Information is obtained through regularly scheduled hearings, reports, briefings, and various other methods. Although DHS finds Congress’ requests for information burdensome, they are absolutely necessary to achieve the objectives listed above. A failure to systematically gather information would result in reverting to fire-alarm oversight. As demonstrated by oversight of intelligence, fire-alarm oversight should not be the primary oversight method. Fire-alarm oversight is, however,

²⁵⁸ U.S. Library of Congress, Congressional Research Service, *Congressional Oversight*, by L. Elaine Halchin and Frederick M. Kaiser, CRS Report 97–936 (Washington, DC: Office of Congressional Information and Publishing, October 17, 2012).

an excellent secondary method. If despite rigorous police patrol oversight abuses or failures occur in the executive branch, Congress must investigate and repair the causes.

Without formal processes and legal authorities the legislative branch cannot conduct systematic oversight. The CIA and DoD had two vastly different oversight structures that produced very different results. The CIA was initially overseen by a single small subcommittee that hardly held any hearings. The Department of Defense received oversight from two very powerful standing committees and defense issues received attention throughout Congress. While the rigor of homeland security oversight falls in between these two oversight structures, it is more closely aligned with defense. Although the changes were not immediate, Congress did establish permanent standing committees in both houses within two years of creating DHS. This is much quicker than the 30 years it took to get permanent intelligence committees. Granted, the Senate transformed the previous Governmental Affairs Committee into the Homeland Security and Governmental Affairs Committee and did not actually create a new committee. The important point is the Senate appointed responsibility, which created a formal mechanism for oversight.

Dedicated committees are extremely important because they allow senators and representatives to build expertise in a particular area.²⁵⁹ Executive agencies do not always readily volunteer all the information members of Congress need to conduct effective oversight.²⁶⁰ Therefore, legislators need to know the correct questions to ask to obtain the right information.²⁶¹ Knowing which questions to ask is primarily a function of experience and knowledge in an area.²⁶² Members of a dedicated standing committee have the opportunity gain this requisite knowledge. Additionally, members of Congress are extremely busy individuals who need wide knowledge about a variety of subjects. Therefore, focused oversight and narrow committee jurisdictions may not necessarily be

²⁵⁹ Martin Kady II, "Cox's Challenge: Take Firm Control of Homeland Security Oversight," *CQ Weekly* (February 15, 2003): 401–2, <http://library.cqpress.com/cqweekly/weeklyreport108-000000601009>.

²⁶⁰ James M. Lindsay, "Congressional Oversight of the Department of Defense: Reconsidering the Conventional Wisdom," *Armed Forces and Society*, 17, no. 7 (1990): 14.

²⁶¹ Zegart, "The Domestic Politics of Irrational Intelligence Oversight," 9.

²⁶² Zegart, "The Domestic Politics of Irrational Intelligence Oversight," 9.

appropriate. As previously noted, oversight is not intended for expediency; it is intended to ensure laws are adhered to, government funds are appropriately expended, and the best interest of the American public is served.²⁶³

Oversight from multiple committees utilizes the expertise of members of Congress from a variety of backgrounds to ensure these goals are achieved. DoD receives oversight from dozens of committees whereas the CIA is overseen by only a handful of committees. In many instances, because of “Gang of Four” or “Gang of Eight” briefings intelligence oversight does not even benefit from the knowledge of the whole committee or their staff. Congressional oversight of DHS mirrors DoD by having dozens of committees responsible for its operations. Critics are warranted in asserting that there are too many committees responsible for DHS. Congress should always be searching for ways to streamline its oversight activities to be more effective and less burdensome to executive branch agencies. A substantial reduction in committees with jurisdiction over DHS, however, is unwarranted and potentially dangerous. The success of DoD oversight makes a compelling case for broadly diffused oversight responsibilities.

Setting an immediate legislative precedent of being involved in the operations and engaged in the oversight of an executive department early in its existence is extremely important. In the first few years of the CIA, legislative counsel Walter Pforzheimer asserted that the Agency attempted to consult and engage members of Congress in its operations but they were simply not interested, or too busy to be bothered.²⁶⁴ This led to many damaging precedents and unanticipated consequences that Congress has spent the last 65 years attempting to repair. First, the executive branch now asserts the prerogative to have complete authority over intelligence operations. Congress is only informed of intelligence activities at the executive’s convenience, schedule, and terms. The legislative branch has attempted to regain influence over intelligence operations, however, once power is relinquished it is extremely difficult to get it back. Congress is consigned to passing weak oversight legislation or running the risk of a presidential veto. Additionally, major intelligence scandals are the only impetus strong enough to produce even weak

²⁶³ Johnson, “Congress and Intelligence,” 122.

²⁶⁴ Snider, *The Agency and the Hill*, 9–10.

legislation. Second, Congress' expertise in intelligence lagged behind that of other federal agencies. Therefore, when it did become involved in the mid- to late 1970s it was subject to a steep learning curve while struggling to get information from a non-cooperative intelligence community.

In contrast, Congress accepted and embraced its defense oversight responsibilities. It was immediately involved in substantive dialogue with the executive branch regarding budgetary issues and within ten years the legislative branch was affecting important national defense policy issues. Similarly, Congress has been extremely involved in homeland security. When DHS was still just an executive "office," members strongly advocated creating an executive level department so Congress could be involved in the process.²⁶⁵ They could now confirm the DHS Secretary position, have control over the budget, and conduct more rigorous oversight. Additionally, the number of hearings, briefings and reports demonstrate that Congress is determined to ensure the security of the United States. As many different scholars assert senators and representatives may have a variety of motivations including electoral, "particularized benefits," and career ambitions.²⁶⁶ As Diana Evans asserts, however, members of Congress are also motivated to further the welfare of the United States.²⁶⁷ Regardless of motivations, the most important factor is that Congress is involved. The executive branch now expects and accommodates the legislative branch's participation in homeland security issues. Although the relationship is reluctant and tumultuous at times at least the dialogue is occurring. Congress can, and certainly will, refine its processes over time. By following the model set by congressional oversight of defense the legislative branch is poised for success.

B. THE IMPORTANCE OF BUDGETARY AUTHORITY

Having accurate and timely information is essential to conducting police patrol oversight. Congress must have a mechanism, or a point of leverage, to obtain this

²⁶⁵ Conley, "The Department of Homeland Security and the Dual Politics of Reorganization: Presidential Preemption, Agency Restructuring, and Congressional Challenges," 2.

²⁶⁶ Mayhew, *Congress: The Electoral Connection*, 53.

²⁶⁷ Evans, "Congressional Oversight and the Diversity of Member's Goals," 670.

information. Executive agencies are not always willing to volunteer information on the chance that Congress may disagree with, and then subsequently attempt to obstruct, its policies. Budgetary control is the strongest coercive power Congress has to obtain such information. The executive branch can question the constitutionality of any such requests or simply refuse to follow legislation. They, however, need funds to operate.

Congress loosened its grasp on the power of the purse over the CIA and weak oversight ensued. Getting information on intelligence matters is already complicated by secrecy. Inadequate budget control only exacerbated the situation. Additionally, when Congress relieved the CIA of normal reporting requirements through the CIA Act of 1949, they forfeited budgetary power that they still have not been able to get back. In contrast, Congress increased its influence over defense policy by doing the exact opposite. Through legislation like the Russell Amendment, legislators increased their budgetary power over weapons procurement decisions, which in turn increased their ability to affect defense policy.

The structure of Congress' budgetary control of homeland security has mirrored very closely that of DoD. Congress has the structural mechanisms in place to affect homeland security policy through the federal budget. The homeland security committees in each house of Congress are responsible for producing an annual authorizations bill.²⁶⁸ Additionally, similar to defense, homeland security has its own appropriations subcommittee in both houses.²⁶⁹ Unfortunately, Congress has failed to utilize these structures. More than 10 years after the establishment of DHS, Congress has yet to pass a homeland security authorizations bill.²⁷⁰ In recent years, draft bills have left committee;

²⁶⁸ "DHS Authorization Bill More Likely Next Year," *Homeland Security Newswire*, August 4, 2009, <http://www.homelandsecuritynewswire.com/dhs-authorization-bill-more-likely-next-year>.

²⁶⁹ Homeland Security, The U.S. House of Representatives Committee on Appropriations, accessed September 29, 2012, <http://appropriations.house.gov/subcommittees/subcommittee/?IssueID=34797>; Subcommittee on Homeland Security, United States Senate Committee on Appropriations, accessed November 7, 2012, <http://www.appropriations.senate.gov/sc-homeland-security.cfm>.

²⁷⁰ Peter T. King (NY), Chairman, Committee on Homeland Security, accessed November 6, 2012, <http://homeland.house.gov/about/chair>.

however, none have officially been signed into law.²⁷¹ DHS has been financially operating for the last decade by either receiving funding directly from the Appropriations Committees or through discrete authorizations bills for individual homeland security agencies.²⁷² Although DoD did not receive an authorizations bill for the first 13 years of its existence, there should be higher expectations for congressional oversight of homeland security. Authorizations processes are much more well-established than they were in 1947, and this practical experience should easily translate to funding DHS. Expecting an authorizations bill in the first year, or even the first five years, may be unreasonable. A few years of operating experience provides the necessary data to construct a practical authorizations bill. Congress, however, should be able to produce a usable authorizations bill after 10 years.

Still, Congress does have the correct mechanisms in place to conduct proper oversight and influence homeland security policy. To this point, Congress has not enacted any legislation that diminishes its power of the purse. The budgetary mechanisms in position still parallel the successful DoD model. Congress is, however, setting the poor precedent that DHS can operate adequately without an authorizations bill. In 2009, the Senate Homeland Security and Governmental Affairs Committee aborted its version of an authorizations bill because “the Obama administration asked (Committee Chairman Joseph Lieberman (I-Connecticut)) not to rush such a measure through Congress this fall.”²⁷³ The failure of Congress to act is furnishing the executive branch power and control that it will later be reluctant to relinquish. Authorizations enable the detailed budgetary control over executive branch operations that is required for good police patrol oversight. Congress must begin to effectively utilize the budget mechanisms it has established for homeland security.

²⁷¹ Jessica Herrera Flanigan, “Authorizing Homeland Security,” *Homeland Security Watch*, September 22, 2011, accessed November 6, 2012, <http://www.hlswatch.com/2011/09/22/authorizing-homeland-security/>.

²⁷² Department of Homeland Security Appropriations Act, 2013, Capitol Words: A Project of the Sunlight Foundation, last modified June 6, 2012, http://capitolwords.org/date/2012/06/06/H3499-2_department-of-homeland-security-appropriations-act/; “DHS Authorization Bill More Likely Next Year,” *Homeland Security Newswire*, August 4, 2009, <http://www.homelandsecuritynewswire.com/dhs-authorization-bill-more-likely-next-year>.

²⁷³ “DHS Authorization Bill More Likely Next Year.”

C. ADDRESSING THE COMMON CRITIQUES

Critics most often cite the numbers of committees overseeing homeland security when condemning Congress' DHS oversight efforts. They assert that this disparate oversight leads to excess reporting, wasted effort, and conflicting direction. The most common causes noted for these problems are partisan politics and congressional "turf battles." While these accusations are not totally without merit, few critics fail to evaluate the alternative: a passive Congress that does not engage in robust oversight. It is unreasonable to expect the legislative branch immediately to perfect its oversight of DHS. Congress needs time to modify its procedures as senators and representatives acquire experience. Additionally, as a political institution Congress is going to be subject to competition between its members.²⁷⁴ Those holding power in Congress will be resistant to change, while those without power will lack the influence to affect modifications to the current oversight structure.²⁷⁵ Changes will, however, occur over the long term. Several years of executive-legislative discourse ensued before Congress passed the Russell Amendment. Congress passed Goldwater-Nichols six years after Operation Eagle Claw and three years after Operation Urgent Fury. Radical changes like Goldwater-Nichols should not be hastily enacted. In an effort to reform homeland security oversight Congress has created homeland security committees and will likely continue to fine-tune its homeland security process over the next several years.

It is difficult to dispute the "electoral connection" associated with both defense and homeland security.²⁷⁶ Defense funding for bases, weapons systems, and other contracts generates significant income for many members' of Congress constituencies. Homeland security also reaps many of the same advantages while additionally benefitting from federal grant money for states and localities. Intelligence, on the other hand, is primarily a federal enterprise which brings very few "particularized benefits" for

²⁷⁴ Lindsay, "Congressional Oversight of the Department of Defense: Reconsidering the Conventional Wisdom," 22.

²⁷⁵ Lindsay, "Congressional Oversight of the Department of Defense: Reconsidering the Conventional Wisdom," 22.

²⁷⁶ Lindsay, "Congressional Oversight of the Department of Defense: Reconsidering the Conventional Wisdom," 18–20.; Roberts, "Shifting Priorities: Congressional Incentives and the Homeland Security Granting Process," 437.

members of Congress and their constituents.²⁷⁷ This does not excuse Congress' negligence of intelligence oversight, but demonstrates that good oversight can result from a variety of motivations. While searching for "particularized benefits" members of Congress will inevitably engage in a variety of oversight activities. Finally, members of Congress are often criticized for doing the very thing they were elected to do; look out for their constituent's best interests. Senators and representatives can easily balance the competing interests of re-election and public welfare. If the best interests of the nation are at stake, members of Congress are capable of putting aside their personal interests.²⁷⁸

D. FINAL CONCLUSION

Despite indictment of critics, congressional oversight of homeland security is far from inoperative. Congress is both assertive and aggressive in its oversight of homeland security. These efforts mirror its strong police patrol oversight of defense and run contrary to the weak and timid oversight of intelligence. Congress has clearly demonstrated to the executive that it has a voice in homeland security policy. Additionally, to affect policy and conduct strong oversight Congress needs information from the executive branch. Although DHS finds it cumbersome, hearings, reports, and briefings are the primary formal methods for Congress to acquire information. Finally, DHS was created entirely from pre-existing federal agencies which already had an effective oversight structure in place. Immediately, discarding the pre-existing oversight structure would be ill-advised. Many members of Congress and their staffs have acquired considerable experience overseeing the agencies that comprise DHS. Failing to utilize this experience for the sake of expediency would undoubtedly lead to poor or incomplete oversight.

Congress must continue to seek ways to improve its oversight of DHS. Although forming committees is a start, there is still much more it can accomplish. First, Congress must get a homeland security authorizations bill to the White House. Only authorizations give Congress the detailed level of control it needs over DHS. Budgetary control gives

²⁷⁷ Zegart, "The Domestic Politics of Irrational Intelligence Oversight," 11–13.

²⁷⁸ Evans, "Congressional Oversight and the Diversity of Member's Goals."

Congress' the leverage to get information and make policy changes. Delaying an authorizations bill only empowers the executive and weakens Congress. As proven by intelligence oversight, once power is ceded it is very difficult to get back.

Second, jurisdiction over more functions of DHS should slowly move to the homeland security committees. These committees need more oversight authority over the major operational elements of DHS such as CBP, USCG, and TSA. Once the senators and representatives on the homeland security committees gain sufficient experience to oversee these agencies DHS would benefit by more consolidated direction. Finally, Congress should hold cross-committee or joint hearings whenever possible to reduce the burden on DHS.²⁷⁹ Although, it is not Congress' responsibility to make life easier for DHS, any measures of good faith would only facilitate executive-legislative relations. While congressional oversight of homeland security may not yet be efficient, it is certainly effective.

²⁷⁹ Ridge with Bloom, *The Test of Our Times*, 260; David Olive, "Congress Heal Thy Self – an Inch Stone Approach," *Homeland Security Policy Institute*, August 15, 2011, <http://securitydebrief.com/2011/08/15/congress-heal-thyself-an-inch-stone-approach/>.

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